

# EDB End-User License Agreement

*Last Revised: February 1, 2024*

## EDB End-User License Agreement

THIS IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND ENTERPRISEDB COVERING ITS PRODUCTS AND SERVICES. BY ACCESSING AND/OR USING THE PRODUCTS OR SERVICES, CUSTOMER IS AGREEING, ON BEHALF OF AN INDIVIDUAL AND/OR A LEGAL ENTITY ("CUSTOMER"), TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

1. **DEFINITIONS.** As used in the Agreement, the following defined terms shall apply:

1.1. **Affiliate** means, with respect to either party, any person, firm, corporation, trust or other entity or combination thereof which directly or indirectly controls, is controlled by, or is under common control with such party; the term "control" meaning an ownership of greater than fifty percent (50%) of the voting and equity rights, of such person, firm, trust, corporation, or other entity (or combination thereof) or the power to direct the management of such person, firm, trust, corporation, or other entity (or combination thereof).

1.2. **Agreement** means this Agreement, and any other documents incorporated herein by reference.

1.3. **Customer Account** means an account for Customer that is required to access and utilize Cloud Services.

1.4. **Customer Content** means any data uploaded to Customer's Account for storage, or data in Customer's computing environment to which EDB is provided access in order to provide Cloud Services or EDB Services. Customer Content shall be treated as confidential information subject to the standard of care set forth in Section 9.7.

1.5. **Cloud Services** means EDB software-as-a-service offerings inclusive of any services delivered through any unified, hosted EDB service delivery platform, including any on-premises components (e.g., client software, tools, on-premises software), and Updates, all as further described in the Documentation. EDB may update the Cloud Services with Updates at any time in its sole discretion. Support Services are included in a Cloud Services subscription.

1.6. **Deliverables** means any deliverables from EDB Services, including but not limited to consulting deliverables and Training Materials.

1.7. **Documentation** means manuals, instructions, and other documents and materials that EDB provides with EDB Products or Deliverables which describe the functionality, components, features or requirements of EDB Products or Deliverables, as amended from time to time.

1.8. **EDB Products** means EDB's proprietary Software and Cloud Services licensed by EDB to Customer pursuant to this Agreement under an applicable Order, together with Updates and any associated Documentation.

1.9. **EDB Services** means Professional Services and Support Services made available by EDB to Customer pursuant to this Agreement under an applicable Order.

1.10. **EnterpriseDB** or **EDB** means the EDB contracting entity specified in Section 9.18.

1.11. **Entitlement** means the purchased EDB Products or EDB Services entitlement(s) under the license and delivery model(s) by which EDB measures, prices and offers the EDB Products and EDB Services to Customer. Entitlements to EDB Products or EDB Services subscriptions are limited to a Subscription Term.

1.12. **Fees** means all EDB fees applicable to EDB Products and EDB Services.

1.13. **Infringement Claim** means any claim, suit or proceeding brought against Customer based on an allegation that EDB Products, EDB Services or Deliverables, as delivered by EDB, infringes upon any patent or copyright or violates any trade secret rights of any third party.

1.14. **Logs** means records of Cloud Services, including, but not limited to, data and information on performance, stability, usage, security, support, and technical information about devices, systems, related software, services or peripherals associated with Customer's use of Cloud Services.

1.15. **Open Source Software** means any open source software provided by EDB in Software or a Deliverable. Open Source Software in Software will be described in the license directory for the Software or identified in the Deliverable. Notwithstanding any other provision of this Agreement, Open Source Software is licensed exclusively under the applicable open source license. PostgreSQL license terms are at <https://www.postgresql.org/about/licence/>.

1.16. **Order** means any initial or subsequent ordering document (including, but not limited to, a purchase order, order form, or signed proposal or statement of work), auto-renewal (if applicable, and you have not provided notice of non-renewal), and/or online request for access to and/or use of the EDB Products or EDB Services submitted to EDB, an EDB authorized reseller, and/or through authorized marketplace websites.

1.17. **Professional Services** means any professional services (including, but not limited to, consulting and training), made available by EDB to Customer pursuant to this Agreement under an applicable Order. Professional Services include Training Services. Professional Services must be used within the timeframe indicated by the SKU, or if there is a statement of work, as indicated by the statement of work. If no timeframe is indicated, Professional Services must be used within six (6) months of purchase. If not used within such time frame, the Professional Services will be forfeited.

1.18. **Security Incident** means unauthorized access to Customer Content resulting in the loss of confidentiality, integrity or availability.

1.19. **Software** means EDB's proprietary programs in object code form made available by EDB to Customer pursuant to this Agreement under an applicable Order, together with Updates and any associated Documentation. Support Services are included in a Software subscription.

1.20. **Subscription Term** means the term for which EDB Products or EDB Services are licensed or made available by EDB to Customer pursuant to this Agreement under an Order, if applicable.

1.21. **Support Services** means EDB's delivery of technical support services for Software or Cloud Services under the offerings described at <https://www.enterprisedb.com/products/plans-comparison> and <https://www.enterprisedb.com/SLO/accept20210816-1> or management and monitoring services described at <https://www.enterprisedb.com/ba/packaged-services-deliverables-v1-4#TAM> and <https://www.enterprisedb.com/ba/packaged-services-deliverables-v1-4#RemoteDBA>. Support Services are included in Software and Cloud Services subscriptions and may otherwise be purchased standalone.

1.22. **Training Materials** means EDB's training courses, course curricula, course descriptions, course materials, and any other documentation or information, in any form or medium, furnished by EDB in connection with Training Services. Training Materials are Deliverables.

1.23. **Training Services** means EDB training services made available by EDB to Partner pursuant to an Order. See details on packaged Training Services at <https://www.enterprisedb.com/ba/packaged-services-deliverables-v1-4#GTCPServices>.

1.24. **Taxes** means all applicable transactional taxes on EDB Products and EDB Services (including but not limited to withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), and tariffs and/or duties) imposed by any government entity or collecting agency based on purchase.

1.25. **Update** means any corrections, bug fixes, features or functions added to or removed from the Products if and when made generally available by EDB during a Subscription Term. Updates are included in EDB Product subscriptions.

1.26. **User** means an individual that is authorized by Customer to access Software or Cloud Services under the Customer's purchased Entitlement.

## 2. RIGHTS.

2.1. **Right to Use Software.** EDB hereby grants Customer a limited, personal, non-exclusive, non-transferable, worldwide license to use the Software under a purchased subscription for internal use in accordance with the Customer's Entitlement and the Documentation. At the conclusion of a Software subscription, if not renewed, Customer agrees to de-install the Software and to cease use of it.

2.2. **Right to Use Cloud Services.** EDB hereby grants Customer a limited, personal, non-exclusive, non-transferable, worldwide license to use the Cloud Services under a purchased subscription for internal use in accordance with Customer's Entitlement and

the Documentation. Except to the extent permitted by applicable law, Customer agrees not to (i) knowingly or negligently access or use the Cloud Services in a manner that abuses or disrupts the EDB networks, security systems, customer accounts, or the Cloud Services, or any third party; (ii) attempt to gain unauthorized access to any of the above through unauthorized means; or (iii) transmit through or post on the Cloud Services any material that is deemed abusive, harassing, obscene, slanderous, fraudulent, libelous or otherwise unlawful. If Customer becomes aware or receives notice from EDB that any Customer Content or any User's access to or use of Customer Content violates this Section, Customer must take immediate action to remove the applicable part of the Customer Content. EDB may ask Customer to remediate, and if Customer fails to comply with such request, EDB may suspend the Cloud Service pursuant to Section 9.9.

**2.3. Right to Use Professional Services.** EDB grants to Customer a limited, personal, non-exclusive, non-transferable, worldwide license to use Professional Services and Deliverables under a purchased subscription or other engagement model in accordance with the Customer's Entitlement for internal use. With respect to Training Materials, use is limited to the Entitlement purchased. All intellectual property rights in all Deliverables, pre-existing works and derivative works of such pre-existing works, as well as developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the Professional Services, are and shall remain the sole and absolute property of EDB.

**2.4. Limitations on Use.** Customer agrees not to; (i) modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or attempt to decipher any code relating to Software, Cloud Services or Deliverables; (ii) market, offer to lease, sell, and/or resell the Software, Cloud Services or Deliverables or use them for service bureau or time sharing or in any other way allow third parties to exploit them; or (iii) if the Customer is an EDB competitor, use the Software, Cloud Services or Deliverables directly or indirectly for competitive development, benchmarking or analysis, except to the extent permitted under applicable law. Customer may allow Affiliates to use EDB Products, Services and Deliverables under its Entitlement provided Customer binds them under this Agreement and remains responsible for any breach from their acts or omissions.

**2.5. Proprietary Rights.** Except for the limited use rights expressly granted herein, Customer has no right, title or interest in or to EDB Products, EDB Services or Deliverables or any intellectual property rights related thereto.

**3. ORDERS, FEES AND PAYMENT.** Customer may order EDB Products or EDB Services using the EDB then-current ordering processes, including authorized reseller and online marketplace ordering processes, as applicable. Customer is responsible for all Fees and Taxes on Orders. Payment is due for an EDB Product or EDB Service for the Entitlement purchased, including any renewals, pursuant to the payment schedule of the associated SKU, including any applicable license model. If you purchase a multi-year subscription, or multi-year renewal, your purchase is for the full value of all years of the Subscription Term, even if required payments are annual. In the event you fail to pay any annual payment on a multi-year subscription, or multi-year renewal, and such default shall

continue for a period of thirty (30) days, then any and all remaining amounts for the relevant subscription shall become immediately due and payable. If you purchase a subscription under a consumption-based license model, your purchase constitutes your agreement to allow for reporting and be invoiced for and pay for consumption at intervals and pricing as defined in the license model. If your purchase includes a spending commitment, your purchase constitutes your agreement to be invoiced for and pay for the commitment as defined in the commitment model. Subscriptions may be auto-renewing (which includes consumption models), as is indicated by the SKU at the time of purchase. Your purchase constitutes your agreement to auto-renewals, if applicable for the offering, for the same term as initially purchased. EDB will provide e-mail notice of each subscription renewal at least sixty (60) days in advance of renewal. You maintain the right to give e-mail notice of non-renewal to EDB at least thirty (30) days in advance of renewal. Each consumption model invoice shall constitute an auto-renewal notice under consumption models. Unless you complete a subscription renewal through an EDB authorized reseller, you understand and agree that the renewal will be invoiced by and payable to EDB. Fees may increase and discounts may not apply to renewals. All Orders, including for subscription renewals, are subject to acceptance by EDB in its discretion. Payments to EDB are due net thirty (30) days after the date of its invoice. Late payments will be subject to an interest rate of up to one percent (1%) per month on the unpaid balance from the due date. All purchases are final, with no right of refund or return, except as expressly provided under Sections 4.2, 6.1 and 7 of this Agreement. EDB reserves the right to suspend an EDB Product or EDB Service subscription or any portion thereof for non-payment of Fees pursuant to Section 9.9 or terminate pursuant to Section 4.2.

#### **4. TERM AND TERMINATION.**

**4.1. Term.** The terms of this Agreement shall apply for the Subscription Term identified in accepted Orders, including any renewals, or for the offered period of a Beta, Tech Preview or Trial.

**4.2. Termination for Cause.** Either party may terminate an EDB Product or EDB Service subscription if the other party breaches any of its material obligations as to the subscription, and fails to cure within thirty (30) days of receipt of written notice from the non-breaching party. In the event of termination by Customer for EDB material breach, Customer shall be entitled to a refund of any unused prepaid Fees, and relief from any subsequent subscription payments due for the remainder of the Subscription Term, with respect to such subscription. Either party may immediately terminate the Agreement if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business. EDB may immediately terminate the Agreement if the Customer breaches Sections 2, 5 or 9.12.

**4.3. Effect of Termination.** Upon termination, except as set forth below, Customer will immediately discontinue all access and use of the relevant EDB Product or EDB Service. Neither party shall be liable for any damages resulting from termination, including without limitation, unavailability of Customer Content arising therefrom; provided, however, termination shall not affect any claim, including, but not limited to Customer payment obligations, arising prior to the effective termination date. Customer may

download Customer Content from a terminated Cloud Service subscription as set forth in Section 5.1.

## **5. CUSTOMER CONTENT AND CUSTOMER ACCOUNT.**

**5.1. Customer Content.** Customer retains all rights to any and all of its Customer Content, subject to a non-exclusive, worldwide, royalty-free, license to EDB as necessary to provide Cloud Services and EDB Services hereunder. Each party shall apply reasonable technical, organizational and administrative security measures, as appropriate relative to Cloud Services and EDB Services, to keep Customer Content protected in accordance with industry standards as identified in Section 9.7. Cloud Service interaction with Customer Content varies depending on the nature of the Cloud Service. If EDB reasonably believes a problem with the Cloud Service may be attributable to Customer Content or Customer's configuration or use of the Cloud Service, Customer shall cooperate with EDB to identify the source of and to resolve the problem. Customer shall comply with all intellectual property laws and obligations related to the Customer Content, as well as all legal duties applicable to Customer by virtue of using the Cloud Service, including providing all required information and notices and obtaining all required consents. EDB's exclusive obligations with respect to care of Customer Content are as expressly set forth herein. For Cloud Services that provide for download of Customer Content, Customer shall have thirty (30) days to download Customer Content after expiration or termination of the Cloud Service subscription and must contact EDB Support Services for download access and instructions. Except for the foregoing, EDB has no obligation to maintain Customer Content following expiration or termination of the Agreement (or Customer's Account for the affected Cloud Service).

**5.2. Customer Account.** Customer is solely responsible for (i) the configuration of Customer's Account; (ii) the operation, performance and security of Customer's equipment, networks and other computing resources used to connect to the Cloud Service; (iii) ensuring all Users exit or log off from the Cloud Service at the end of each session in accordance with Customer's session policy; (iv) maintaining the confidentiality of Customer's Account, User id's, conference codes, passwords and/or personal identification numbers used in conjunction with the Cloud Service, including not sharing login information among Users; and (v) all uses of the Service that occur using Customer's Account. Customer will notify EDB immediately of any unauthorized use of its Account or any other breach of security. Ownership of Customer's Account is directly linked to the individual or entity that completes the registration process for the Account. Customer acknowledges that EDB will rely on the information provided for issues arising with the Customer Account.

**5.3. Customer Account Access/Instructions.** The Customer Account owner, and any authorized User, will have access to information in the Customer Account. EDB will not provide access to any other User at any time. Customer agrees that EDB may rely on instructions given by the Customer Account owner either through the Account dashboard or via email from the address on file for the Customer Account owner. Customer agrees not to request access to or information about an account that is not owned by the Customer. In the event of a dispute regarding Customer Account data,

EDB will only release information to another party other than the Customer Account owner pursuant to a court order or other notarized waiver and release as determined by EDB.

## **6. WARRANTIES AND WARRANTY DISCLAIMER.**

**6.1 Software Subscription Warranty.** EDB warrants that during the Subscription Term, the Software when used in accordance with the Documentation will materially conform to the specifications in the Documentation, and Support Services will be delivered in a professional manner but that does not mean that every question raised will be resolved in a certain amount of time. EDB further warrants that it will employ commercially reasonable efforts in accordance with industry standards to detect and remove malware or malicious code from Software prior to delivery. EDB's entire liability and your exclusive remedy will be (i) replacement of the Software with conforming Software or provision of conforming Support Services, and if that is not possible or commercially practicable, (ii) termination of the subscription and provision of a prorated refund of any unused pre-paid Fees for the subscription from the date of non-conformance, and relief from any subsequent subscription payments due for the remainder of the Subscription Term.

**6.2. Cloud Services Warranty.** EDB warrants that during the Subscription Term, the Cloud Service, when used in accordance with the Documentation, will materially conform to the specifications in the Documentation, and Support Services will be delivered in a professional manner but that does not mean that every question raised will be resolved in a certain amount of time. EDB further warrants it will employ commercially reasonable efforts in accordance with industry standards to prevent the transmission of malware or malicious code via the Cloud Services. EDB's entire liability and your exclusive remedy will be (i) provision of a conforming Cloud Service or provision conforming Support Services, and if that is not possible or commercially practicable, (ii) termination of the subscription and provision of a prorated refund of any unused pre-paid Fees for the subscription from the date of non-conformance, and relief from any subsequent subscription payments due for the remainder of the Subscription Term.

**6.3. Support Services Subscription Warranty.** EDB warrants that during the Subscription Term, Support Services purchased as a standalone subscription will be delivered in a professional manner, but that does not mean that every question raised will be resolved in a certain amount of time. EDB's entire liability and your exclusive remedy will be (i) provision of conforming Support Services, and if that is not possible or commercially practicable, (ii) termination of the subscription and provision of a prorated refund of any unused pre-paid Fees for the subscription from the date of non-conformance, and relief from any subsequent subscription payments due for the remainder of the Subscription Term.

**6.4. Professional Services Warranty.** Professional Services will be delivered in a professional manner and Deliverables will materially conform to the specifications of the applicable SKU, but that does not include a commitment to achieve a particular outcome or results. EDB's entire liability and your exclusive remedy will be (i) re-performance of the Professional Services, and if that is not possible or commercially

practicable, (ii) provision of a prorated refund of any pre-paid Fees for the non-conforming Professional Services. Customer agrees to reasonably cooperate with re-performance. Warranty claims for Professional Services must be made in writing within ten (10) days of your receipt of any non-conforming Professional Services or Deliverables.

**6.5. Warranty Disclaimer.** THE FOREGOING LIMITED WARRANTIES DO NOT COVER PROBLEMS ARISING BY ACCIDENT, ABUSE OR USE IN A MANNER INCONSISTENT WITH THIS AGREEMENT OR RESULTING FROM EVENTS BEYOND EDB'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, UNAVAILABILITY OF OR OPERATION IN COMBINATION WITH A THIRD PARTY NETWORK OR SYSTEM, HARDWARE, SOFTWARE, SERVICE OR DATA. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EDB DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER IMPLICATION, ESTOPPEL OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, AND ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, OR BUGS OR ERRORS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, THEREFORE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY IF CUSTOMER IS LOCATED IN SUCH A JURISDICTION. CUSTOMER IS RESPONSIBLE FOR THE SELECTION AND USE OF EDB PRODUCTS AND EDB SERVICES.

**7. INDEMNIFICATION BY EDB.** EDB shall indemnify and defend Customer against any third party Infringement Claim, and pay reasonable attorneys' fees, court costs, damages finally awarded, or reasonable settlement costs, with respect to such Infringement Claim; provided that: (i) Customer promptly notifies EDB in writing of an Infringement Claim such that EDB is not prejudiced by any delay of such notification; (ii) EDB has sole control over the defense and any settlement of any Infringement Claim; and (iii) Customer provides reasonable assistance in the defense of same. If Customer's use of any of the EDB Products, EDB Services or Deliverables is, or in EDB's opinion is likely to be, enjoined as a result of an Infringement Claim, EDB shall, at its sole option and expense, either (i) procure for Customer the right to continue to use them as contemplated herein, or (ii) replace or modify them to make their use non-infringing without degradation in performance or a material reduction in functionality. If options (i) and (ii) are not reasonably available, EDB may, in its sole discretion and upon written notice to Customer, require return of the relevant EDB Products or Deliverables, or cancel access to the relevant EDB Services, and refund to Customer any unused pre-paid Fees for the relevant Subscription Term or EDB Services, and provide relief from any subsequent subscription payments due for the remainder of the Subscription Term. EDB assumes no liability, and shall have no liability, for any Infringement Claim to the extent based on (i) Customer's access to and/or use of the EDB Products, EDB Services or Deliverables following notice of an Infringement Claim; (ii) any modification of the EDB Products, EDB Services or Deliverables by Customer or at its direction; (iii) Customer's combination of the EDB Products, EDB Services or Deliverables with third

party programs, services, data, hardware, or other materials; or (iv) Open Source Software in Software or Deliverables; or (v) any trademark or copyright infringement involving any marking or branding not applied by EDB or involving any marking or branding applied at Customer's request. THE FOREGOING STATES EDB'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM HEREUNDER.

**8. LIMITATION OF LIABILITY.** EXCEPT FOR A BREACH BY CUSTOMER OF SECTION 2, INDEMNIFICATION BY EDB UNDER SECTION 7, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA; (ii) LOSS OF INCOME; (iii) LOSS OF OPPORTUNITY; (iv) LOST PROFITS; OR (v) UNAVAILABILITY (EXCLUDING CREDITS DUE FOR ANY EDB SERVICE LEVEL AGREEMENT OBLIGATION) OR NON-PERFORMANCE OF ANY OR ALL OF THE EDB PRODUCTS OR EDB SERVICES, IN EACH CASE, HOWEVER CAUSED, AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY. EXCEPT FOR A BREACH BY CUSTOMER OF SECTION 2, INDEMNIFICATION BY EDB UNDER SECTION 7, OR A SECURITY INCIDENT TO THE EXTENT CAUSED BY EDB'S BREACH OF THE EDB SECURITY EXHIBIT OR EDB DATA PROCESSING ADDENDUM, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER OR ANY OTHER PERSON ARISING OUT OF THIS AGREEMENT AND/OR THE TERMINATION THEREOF, SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SOFTWARE OR CLOUD SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, OR IN THE CASE OF PROFESSIONAL SERVICES, THE AMOUNT PAID FOR THE APPLICABLE SERVICES (GENERAL CAP). IN THE CASE OF A SECURITY INCIDENT TO THE EXTENT CAUSED BY EDB'S BREACH OF THE EDB SECURITY EXHIBIT OR EDB DATA PROCESSING ADDENDUM, THE TOTAL CUMULATIVE LIABILITY OF EDB TO CUSTOMER SHALL BE LIMITED TO THE SUM OF 2X THE AMOUNTS PAID FOR THE APPLICABLE SOFTWARE, CLOUD SERVICE OR SUPPORT SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, OR IN THE CASE OF PROFESSIONAL SERVICES, 2X THE AMOUNT PAID FOR THE APPLICABLE SERVICE (SUPER CAP). IN NO EVENT SHALL EDB BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL CAP AND THE SUPER CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF THERE ARE ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE SUPER CAP. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATIONS TO PAY ANY FEES AND/OR OTHER SUMS DUE UNDER ANY ORDER.

## 9. ADDITIONAL TERMS.

**9.1. U.S. Government End-Users.** If Customer is a U.S. Government agency, Customer hereby acknowledges and agrees that Software and the software being accessed through Cloud Services, as well as any client software that is downloaded by any User in connection with a Cloud Service, constitutes "Commercial Computer Software" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 CFR 2.101. Therefore, in accordance with Section 12.212 of the FAR (48 CFR 12.212), and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement ("DFARS") (48 CFR 227.7202-1 and 227.7202-3), the use, duplication, and disclosure of the software and related Documentation by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this Agreement. If, for any reason, FAR 12.212 or DFARS 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, Customer hereby acknowledges that the Government's right to use, duplicate, or disclose the Software or other software and related Documentation are "Restricted Rights" as defined in 48 CFR Section 52.227-14(a) (May 2014) or DFARS 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is EnterpriseDB Corporation, 34 Crosby Drive, Bedford, MA 01730, U.S.A.

**9.2. Australian Consumers.** EDB offerings come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the EDB offerings repaired or replaced if the offerings fail to be of acceptable quality and the failure does not amount to a major failure. Notwithstanding any other provision of this Agreement and to the extent permitted by applicable law, EDB's liability arising from or in relation to a claim under or a breach of any warranty or statutory guarantee that cannot be excluded will be limited, at EDB's option to: (i) the supplying of the Cloud Services or EDB Services again; or (ii) the payment of the cost of having the Cloud Services or EDB Services supplied again.

**9.3. Trial and Freemium.** If an EDB Product offering is identified as a trial, Customer may use the EDB Product for a limited period for internal demonstration, test, or evaluation purposes. If an EDB Product is offered as a freemium offering, Customer may use the EDB Product for production purposes during the term of the offering. EDB PROVIDES TRIALS AND FREEMIUM OFFERINGS "AS IS" AND WITHOUT WARRANTY. ANY CUSTOMER DATA UPLOADED IN A CLOUD SERVICES TRIAL OR FREEMIUM OFFERING WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME CLOUD SERVICE AS COVERED BY THE TRIAL OR FREEMIUM OFFERING AT THE CONCLUSION OF ITS TERM OR EXPORTS SUCH DATA BEFORE SUCH DATE.

**9.4. Beta and Tech Preview.** EDB Products do not include Beta or Tech Preview software or cloud services. CUSTOMER ACKNOWLEDGES THAT ANY SOFTWARE OR CLOUD SERVICE IDENTIFIED AS BETA OR TECH PREVIEW IS OFFERED "AS-IS" FOR INTERNAL DEMONSTRATION, TEST OR EVALUATION PURPOSES AND WITHOUT WARRANTY. SUCH SOFTWARE OR CLOUD SERVICE MAY CONTAIN BUGS, ERRORS

AND OTHER DEFECTS. EDB does not make any representations, promises or guarantees that such offerings will be publicly announced or made generally available. EDB has no obligation to provide Updates or Support Services or continued availability, and such offerings can be suspended or terminated at any time by EDB at its sole discretion without notice.

**9.5. Third Party Products, Services or Content.** A Cloud Service may contain features or functions that enable interoperation with third party products, services or content. EDB may also provide access to third party products, services or content directly within the Cloud Service. Third party products, services or content, and Customer content in third party services, are not part of the Services and are not warranted or supported by EDB. Your use of such third party products, services or content is subject to the terms of the third party, not EDB.

**9.6. Consent to Use Logs.** EDB and its service providers may collect and use Logs for purposes of facilitating Cloud Services, including securing, managing, measuring and improving the Cloud Services. Logs may be used for purposes not specified in this Section only in an aggregated, anonymized form.

**9.7. Security and Privacy.** When providing Cloud Services or EDB Services, EDB will (i) implement and maintain the administrative, physical and technical security controls as set forth in the EDB Security Exhibit

at [https://www.enterprisedb.com/sites/default/files/V1.1-EDB-Information-Security-Exhibit-\(1\).pdf](https://www.enterprisedb.com/sites/default/files/V1.1-EDB-Information-Security-Exhibit-(1).pdf) and (ii) process personal data on Customer's behalf as set forth in the EDB Data Processing Addendum at <https://www.enterprisedb.com/data-protection-addendum-biganimal>. Customer agrees to provide any notices, obtain any consents or otherwise establish the legal basis necessary for EDB to access and process personal and other data as specified in this Agreement. The EDB Services Security Exhibit and EDB Data Processing Addendum are incorporated herein by reference. Except as may be specifically identified in the Documentation for a particular offering, Cloud Services and EDB Services are not designed for, and do not support, personal health information as covered by US HIPAA regulations.

**9.8. Cloud Service Infrastructure.** Cloud Services may be hosted on public or EDB private clouds. EDB may change cloud providers and/or clouds at its discretion but will provide at least thirty (30) days' notice of such a change and will use reasonable efforts to reduce any impact on availability of Cloud Services. Cloud Services are generally available 7/24/365, except during scheduled maintenance performed after contiguous U.S. business hours or on U.S. federal holidays. EDB will provide notice of any emergency maintenance or Updates that may impact availability during normal business hours.

**9.9 Cloud Services Service Level.** The EDB Service Level Agreement for Cloud Services is at <https://www.enterprisedb.com/service-level-agreement-sla-biganimal-20230823>. Your exclusive remedy for breach of service level commitments in the EDB Service Level Agreement is as identified therein. The EDB Service Level Agreement is incorporated herein by reference.

**9.9. Suspension of Service.** EDB reserves the right to suspend an EDB Product or EDB Service subscription if (i) payment is not received within thirty (30) days from the date

on which payment is due; (ii) Customer's or its Users' use is in breach of this Agreement and not cured as required by Section 4.2; (iii) Customer failed to timely address EDB's request to take action pursuant to Section 2.2; or (iv) suspension is required pursuant to a subpoena, court order or other legal process. EDB agrees to notify Customer of any such suspension. Customer will remain responsible for all fees incurred before or during any suspension.

9.10. **High-Risk Use.** Customer acknowledges that EDB Products are not designed or intended for use in or with high-risk activities.

9.11. **Voice and Data Charges; Customer Connectivity.** Customer is responsible for all fees and charges imposed by Customer's telephone carriers, wireless providers, and other voice and/or data transmission providers arising out of access to and use of EDB Products or EDB Services. If Customer's broadband connection and/or telephone service fails, or Customer experiences a power or other failure or interruption, Customer's access to Cloud Services or EDB Services may fail for reasons outside of EDB's control.

9.12. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without EDB's prior written consent, except that Customer may assign this Agreement in whole to an Affiliate, or a successor in interest as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Customer shall provide notice to EDB upon completion of any permitted assignment. Any attempted assignment in violation of the foregoing shall be void. This Agreement will bind and inure to the benefit of each party's successors or permitted assigns.

9.13. **Export Restriction and Compliance with Laws.** Customer acknowledges that the EDB Products and EDB Services may be subject to U.S., foreign, and international export controls and economic sanctions laws and regulations and agrees to comply with all such applicable laws and regulations, including, but not limited to, the U.S. Export Administration Regulations ("EAR") and regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Customer agrees not to, directly or indirectly, allow access to or use of the EDB Products or EDB Services in embargoed or sanctioned countries/regions, by sanctioned or denied persons, or for prohibited end-uses under U.S. law without authorization from the U.S. Government. Both parties agree to comply with all other laws, rules and regulations applicable to that party or its activities hereunder.

9.14. **Compliance.** To the extent permitted by applicable law, and no more often than once each calendar year, EDB may request at its sole discretion that you self-report EDB Product usage or allow it to audit your usage. You agree to cooperate upon thirty (30) days' advance notice and during normal business hours. EDB will provide you with any necessary tools or assistance.

9.15. **Notices.** All legal notices required under this Agreement shall be in writing and delivered in person or by certified or registered express mail to the address last designated on the account for Customer, and the EDB contracting entity as specified below, or such other address as either party may specify by notice to the other party as provided herein. Notice shall be deemed given (i) upon personal delivery; (ii) if delivered

by air courier or email, upon confirmation of receipt; or (iii) five (5) days after deposit in the mail. A copy of all legal notices from Customer to EDB must also be sent to [legal-notices@enterprisedb.com](mailto:legal-notices@enterprisedb.com). Non-legal notices under Section 3.0 or 9.8 may be provided to the other party's applicable email address and shall be deemed effective as of the date and time stamp on the email. EDB may also provide Customer with non-legal notices through its website and/or through in-product or in-service messaging or dashboards, which shall likewise be deemed effective immediately.

**9.16. Force Majeure.** Neither party will be responsible or have any liability for any delay or failure to perform its non-monetary obligations hereunder to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts of civil and military authorities and severe weather. The affected party will give the other party prompt written notice of the failure to perform due to Force Majeure and use its reasonable efforts to limit the resulting delay in its performance.

**9.17. General Terms.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement. The provisions of Sections 1 (Definitions), 2.2 (Limitations on Use), 2.4 (Proprietary Rights), 3 (Orders, Fees, and Payments), 4.3 (Effect of Termination), 5 (Customer Content and Customer Account), 7 (Indemnification by EDB), 8 (Limitation of Liability), 9.15 (Notices), 9.17 (General Terms), and 9.18 (EDB Contracting Entity, Choice of Law and Venue) shall survive any termination of the Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect. The parties are independent contractors and nothing in this Agreement creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between or among the parties. EDB may subcontract responsibilities under this Agreement to Affiliates and/or third parties but remains responsible for breach of this Agreement by acts or omissions of such subcontractors. No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof. EDB authorized resellers (including distributors) do not have the right to make modifications to this Agreement or to make any additional representations, commitments, or warranties binding on EDB. No waiver or amendment of any term or condition of this Agreement shall be valid or binding on any party unless agreed to in writing by such party. EDB's failure to enforce any term of this Agreement will not be construed as a waiver of the right to enforce any such terms in the future. Unless otherwise specified, remedies are cumulative.

**9.18. EDB Contracting Entity, Choice of Law and Venue.** The EDB contracting entity, as well as the governing law, and the venue with exclusive jurisdiction, relative to any dispute or claim arising out of or in connection with this Agreement, is: <https://www.enterprisedb.com/edb-contracting-entities>.

**9.19. Entire Agreement; Order of Precedence.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements. Nothing contained in any Order or any other document or terms submitted by Customer with or as part of an Order, shall in any way add to or otherwise modify the Agreement or any EDB purchase program terms under which an Order is submitted. The terms of this Agreement or other referenced documents may be updated by EDB from time to time without notice (but will be posted on the EDB website and identified by a "Last updated" date). Customer's continued access to and use of the Services constitutes acceptance of the then-current terms.