



# TiDB Cloud Services Agreement

Last updated on June 3, 2024

To see previous versions, click [here](#).

This TiDB Cloud Services Agreement (this “CSA”) is an agreement between the applicable PingCAP Contracting Entity (as defined below) (“PingCAP”, “we”, “us”, or “our”) and you or the entity you represent (“you” or “your”), which contains the terms and conditions that govern your access to and use of the TiDB Cloud Services (as defined below). This CSA takes effect when you check a box confirming that you agree with the terms of this CSA and click an “I agree to the TiDB Cloud Services Agreement” or similar button or, if earlier, when you create any TiDB Cloud Services cluster.

## 1. Definitions

1.1. “**Acceptable Use Policy**” has the meaning set forth in Section 3.2.

1.2. “**Affiliate**” means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, “control” means the power to direct the management or affairs of an entity and “ownership” means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

1.3. “**Business Associate Agreement**” means a business associate agreement governing the parties’ respective obligations with respect to any patient, medical or other protected health information (as defined under the Health Insurance Portability and Accountability Act of the United States, as supplemented and amended) uploaded by you to the TiDB Cloud Services in accordance with the terms of this CSA.

1.4. “**Confidential Information**” means all information agreed in writing by both parties to be confidential or clearly identified as confidential by the disclosing party at the time of disclosure. The pricing under this CSA is the Confidential Information of both parties. Your order form(s) and Your Content stored in the TiDB Cloud Services are your Confidential Information. All technology and specifications relating to the TiDB Cloud Services are the Confidential Information of PingCAP. Notwithstanding the foregoing, “Confidential Information” shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party, without reference to the disclosing party’s Confidential Information.



1.5. “**DPA**” means the Data Processing Agreement for TiDB Cloud Services, a current version of which is available [here](#).

1.6. “**Effective Date**” is the date when you check a box confirming that you agree with the terms of this CSA and click an “I agree to the TiDB Cloud Services Agreement” or similar button or, if earlier, when you create any TiDB Cloud Services cluster.

1.7. “**IP Rights**” means all intellectual property rights throughout the world, including patents, copyrights, trademarks, trade secrets, database rights and any other rights in data or data compilations.

1.8. “**Law**” means any statute, law or ordinance in any jurisdiction, or any rule or regulation of any governmental body.

1.9. “**PingCAP Contracting Entity**” means: (a) if you or the entity that you represent is located in North or South America, PingCAP (US), Inc.;(b) if you or the entity that you represent is located in Japan, PingCAP Kabushiki-Kaisha; and (c) if you or the entity that you represent is not located in any of the foregoing places, PingCAP Pte. Ltd.

Note that we do not provide cloud services in the People’s Republic of China (excluding the Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan).

1.10. “**Service Data**” means query logs and any data (other than Your Content) relating to your use of the TiDB Cloud Services or the operation, maintenance or support thereof.

1.11. “**Service Level Agreement**” or “**SLA**” means PingCAP’s current service level offerings for the TiDB Cloud Services. The current SLA is located at [here](#). The SLA may be updated by PingCAP from time to time.

1.12. “**Site**” means our official website for the TiDB Cloud Services. The current website is [here](#).

1.13. “**Term**” has the meaning set forth in Section 5.1.

1.14. “**TiDB**” means an open source, distributed, NewSQL database that supports Hybrid Transactional and Analytical Processing (HTAP) workloads. It is MySQL-compatible and features horizontal scalability, strong consistency, and high availability.

1.15. “**TiDB Cloud Services**” means PingCAP’s cloud-native TiDB that is capable of being deployed on multiple cloud platforms, such as Amazon Web Services (AWS) and Google Cloud Platform (GCP) and supports massive-scale, mission-critical online transaction processing (OLTP) and real-time analytics workloads.

1.16. “**User Suggestions**” means all suggested improvements, enhancement requests, ideas for new functionality or customizations, recommendations, corrections or other feedback that you provide to PingCAP relating to the TiDB Cloud Services.



1.17. “**Your Content**” means (a) any data or content that is transferred by you or on your behalf to the TiDB Cloud Services and (b) any computational results that you derive from the foregoing through use of the TiDB Cloud Services. For clarity, Your Content does not include your TiDB Cloud account information, or any data generated by you relating solely to your use of the TiDB Cloud Services (e.g., error logs).

## 2. Registration and Your Account

2.1. To register to use the TiDB Cloud Services, you must create a username and password and provide us with the information requested in the registration process. You must provide complete and accurate information during the registration process and agree to update your information to ensure it remains accurate. You are responsible for (a) keeping your account credentials secure at all times and (b) not disclosing your account credentials to any other person nor permit anyone to access your account at any time. You must contact us immediately if you believe that there was any unauthorized access to your account or if your account information is lost or stolen.

2.2. IF YOU ARE USING THE TiDB CLOUD SERVICES AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF AN ENTITY, THEN (a) YOU MUST BE AUTHORIZED TO BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS CSA AND (b) YOU REPRESENT AND WARRANT TO US THAT YOU HAVE THE AUTHORITY TO DO SO.

## 3. Use of the Services

3.1. You may access and use the TiDB Cloud Services solely in accordance with this CSA. You will comply with the terms of this CSA and all Laws applicable to your use of the TiDB Cloud Services.

3.2. You represent, warrant and covenant to us that you will not:

- a. use the TiDB Cloud Services to store, transmit, publish or make available any content that is false, defamatory, harassing, obscene, illegal, violating privacy rights or any other third-party rights, or containing viruses, malware or any other malicious code;
- b. access or use the TiDB Cloud Services for any illegal or unlawful activity or business (including but not limited to business without essential licenses and/or qualifications) or any purpose that violates this CSA;
- c. use the TiDB Cloud Services to cause damage or injury to any person or property;
- d. perform or disclose any benchmarking or use the TiDB Cloud Services to build similar or competitive products or services;
- e. permit direct or indirect access to or use of the TiDB Cloud Services in a manner that violates this CSA, including in a service bureau, outsourcing services offering, or as part of any general purpose data warehousing service for the benefit of a third party;

- f. reverse engineer, decompile, disassemble, or extract any element of, use data gathering or extraction tools, or otherwise discover any source code, object code, software programs, processes, algorithms, methods, techniques, data, or information embodied in the TiDB Cloud Services;
- g. modify, transfer, assign, pledge, lease, sell, resell, or create derivative works based on the TiDB Cloud Services or any user interfaces related to the foregoing;
- h. interfere with or damage the proper functioning of other users' use or enjoyment of the TiDB Cloud Services;
- i. tamper with, hack, or otherwise disrupt any computer system, server, or networked device associated with the TiDB Cloud Services;
- j. remove or destroy any TiDB/PingCAP proprietary markings or proprietary legends placed upon or contained within the TiDB Cloud Services; or
- k. attempt to do any of the foregoing prohibited activities.

The above-mentioned restrictions in (a) through (k) are collectively referred to as PingCAP's "**Acceptable Use Policy**".

3.3. You acknowledge and agree that PingCAP may engage Amazon Web Services (AWS) or Google Cloud Platform (GCP) and other third-party service providers to provide services to PingCAP in connection with our provision of the TiDB Cloud Services.

3.4. You agree that PingCAP may collect and use non-personal, anonymous, aggregated, statistical, performance or de-identified data (other than Your Content), and other performance information for legitimate business purposes, such as support, reporting, research, improvements to TiDB Cloud Services, industry partnerships, and other legitimate internal business purposes.

3.5. If you obtain or use any third-party products or services in connection with your use of the TiDB Cloud Services, you are solely responsible for evaluating and assessing such products or services to determine whether they meet your requirements. Any use of such third-party products or services are solely between you and the applicable third party, and PingCAP will have no liability with respect to such third party's products or services.

3.6. PingCAP will provide you with the level of support set forth in the [SLA](#).

## 4. Fees and Payment

4.1. PingCAP will calculate and bill your usage of the TiDB Cloud Services monthly. You hereby authorize PingCAP (or our designee) to charge you on the first day of each month for all applicable fees for your use of the TiDB Cloud Services during the previous month using one of the payment methods we support. You acknowledge that the amount billed each month may vary depending on the volume of your usage of the TiDB Cloud Services and that we may bill you more frequently for fees accrued in our discretion, including if we believe there is a risk of non-payment or suspect that your account may be fraudulent. All payment obligations are non-cancelable and must be paid without setoff or deduction, and all amounts paid are non-refundable. We may increase or add new fees and charges for the TiDB Cloud Services by



updating the Site. In the event that we change the pricing for the TiDB Cloud Services, the fees payable by you will increase or decrease in accordance with any such changes upon the date specified on the Site.

4.2. You need to provide certain financial information to us before you begin using the TiDB Cloud Services. This financial information will solely be used for billing and payment purposes, as set forth in Section 4.1.

4.3. You agree to reimburse PingCAP for any sales, value-added or other similar taxes imposed by applicable Law that PingCAP must pay based on the TiDB Cloud Services you ordered (excluding, for the avoidance of doubt, taxes based on PingCAP's income). If PingCAP has the legal obligation to pay or collect taxes for which you are responsible under this Section 4.3, PingCAP will invoice you and you will pay that amount to PingCAP. Taxes will not be deducted from payments to PingCAP, except as required by applicable Law, in which case you will increase the amount payable as necessary so that, after making all required deductions and withholdings, PingCAP receives and retains an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon PingCAP's request, you will provide to PingCAP your proof of withholding tax remittance to the respective taxing authority. Also, you will reimburse PingCAP for reasonable expenses related to providing the TiDB Cloud Services, such as the transaction fees charged by banks in the process of your payment to PingCAP. Except as otherwise expressly provided herein, all fees and expenses paid to PingCAP are non-refundable.

4.4. **Late Payments.** Any late payments shall be subject to a service charge equal to one and one-half percent (1.5%) per month of the amount due or the maximum amount allowed by Law, whichever is less.

4.5. **PoC Usage.** PingCAP may offer you promotional credits for your PoC (Proof of Concept) of the TiDB Cloud Services. Any such credits have no cash value, are non-transferable and non-refundable, and expire fourteen (14) days after they are issued or once those credits are exhausted, whichever comes first.

4.6. **Insolvency Risk.** In the event that you become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding or if you believe that there is a material risk of any of the foregoing occurring, you agree to promptly notify us via email notice at [deal-management@pingcap.com](mailto:deal-management@pingcap.com).

## 5. Term, Termination and Deletion

5.1. The term of this CSA will remain in effect until terminated pursuant to this Section 5.

5.2. You may terminate this CSA at any time for any reason by providing us email notice at [deal-management@pingcap.com](mailto:deal-management@pingcap.com) or deleting all of the clusters you have created using the TiDB Cloud Services. We may terminate this CSA for any reason by providing you at least thirty



(30) days' advance notice. Any notice of termination of this CSA by either party to the other must include a termination date that complies with the notice periods set forth in this Section 5.

5.3. If either party breaches a material term of this CSA and fails to cure the breach within thirty (30) days of written notice of such breach, then the breaching party is in default and the non-breaching party may terminate this CSA on or after such thirty (30)-day cure period. If PingCAP terminates this CSA as specified in the preceding sentence, you must pay within thirty (30) days all amounts which have accrued up to and including the termination date, as well as all sums remaining unpaid for the TiDB Cloud Services ordered under this CSA, plus any applicable taxes and expenses. The non-breaching party may agree in its sole discretion to extend the thirty (30)-day cure period for so long as the breaching party continues to use reasonable efforts to cure such breach.

5.4. PingCAP reserves the right to immediately suspend your access to or use of the TiDB Cloud Services or terminate this CSA without notification if:

- a. we believe that there is a significant threat to the functionality, security, integrity, or availability of the TiDB Cloud Services or to PingCAP's other customers, including if the TiDB Cloud Services are experiencing a DDoS attack or other attack or disruption outside of our control;
- b. we believe that you are violating the Acceptable Use Policy;
- c. we need to do so to comply with the Law or requests of governmental bodies;
- d. you (or any of your Affiliates) become subject to official accusation or investigation of any kind in any jurisdiction, which we believe that may bring imminent harm to us;
- e. we have not received the full amount stated in our invoice to you after the due date in such invoice.

Upon occurrence of any of above events, you may submit and PingCAP may (but shall not be obligated to) also request evidence or certificates to prove your compliance; provided, however, that such information supplementing process shall be without prejudice to PingCAP's suspension and termination rights as set forth herein. In addition, when reasonably practicable and lawfully permitted, PingCAP will provide you with advance notice of any such suspension or termination. PingCAP will use reasonable efforts to re-establish the TiDB Cloud Services promptly after we determine that the issue causing the suspension has been resolved. Any suspension or termination under this Section 5.4 shall not excuse you from your obligation to make payments under this CSA; provided that, for clarity, no use fees shall accrue during any such period of suspension.

5.5. Upon termination of this CSA (a) subject to Section 5.6, all your rights under this CSA immediately terminate and (b) you remain responsible for all fees and charges you have incurred and payments due up to and including the termination date. For a period of sixty (60) days after the termination of this CSA, upon your request, PingCAP will make Your Content (as it exists as of the termination date) available for your retrieval. At the end of such sixty (60)-day period, and except as may be required by Law, PingCAP will have no obligation to make Your Content available to you and may delete or otherwise render unrecoverable any of Your Content that remains in the TiDB Cloud Services.





5.6. The following Sections will survive the termination or expiration of this CSA: Sections 4.1 to 4.4, Sections 6.4 to 6.6, Sections 8 to 11, and Section 14.

5.7. Notwithstanding the foregoing, for the PoC, we will delete your database and backups (including Your Content) when your PoC expires or once your promotional credits are exhausted, whichever comes first. For PoC only, upon your request, we will make your backups (as it exists as of the termination date) available for your retrieval for a period of seven (7) days.

## 6. Ownership and Licenses of IP Rights

6.1. **Reservation of Rights.** This CSA does not transfer any right, title or interest in or to any IP Rights to any person or entity. Except as expressly set forth in this Section 6, no right or license is granted by a party or its Affiliates to any person pursuant to this CSA.

6.2. As between you and us, you own all right, title and interest in and to Your Content and all IP Rights embodied therein. Except as provided in this Section 6, PingCAP does not obtain any rights to Your Content from you under this CSA. You hereby consent to our use of Your Content to (a) provide you with the TiDB Cloud Services, (b) prevent or address technical issues with the TiDB Cloud Services, (c) otherwise perform our obligations set forth in this CSA and (d) comply with applicable Law.

6.3. As between you and us, we own all rights, title, interest, and IP Rights in and to (a) the TiDB Cloud Services and all related technology and (b) anything arising out of or in any way connected with the TiDB Cloud Services (including but not limited to ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials) that we have developed or delivered to you under this CSA. Subject to your compliance with the terms of this CSA, we hereby grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferable, worldwide license to access and use the TiDB Cloud Services solely in accordance with this CSA.

6.4. **Service Data.** Notwithstanding anything to the contrary in this CSA, PingCAP may collect Service Data to develop, support, modify, improve and operate its products and services, including the TiDB Cloud Services. PingCAP may not share any Service Data that includes your Confidential Information with a third party except (a) as permitted by Section 11 or (b) to the extent the Service Data is aggregated or anonymized such that you and your users cannot be identified.

6.5. If you choose to provide us any User Suggestions, you hereby grant us a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up, sublicensable (through multiple tiers), transferable, worldwide license under your IP Rights to use the User Suggestions in our and our Affiliates' business and to disclose such User Suggestions to others without restriction or payment. To avoid doubts, we may use the User Suggestions for any purpose, including incorporating the User Suggestions into, or using the User Suggestions to develop and improve our products/services and our other offerings without attribution or compensation.



6.6. You represent and warrant to us that (a) you have all rights in Your Content and User Suggestions necessary to grant us the rights contemplated by this CSA and (b) none of Your Content violates this CSA, any applicable Law or any IP Right or other right of any third party.

## 7. Content Protection and Data Privacy

7.1. You will ensure that Your Content, and your use of it, complies with this CSA and any applicable Law. You are responsible for properly configuring and using the TiDB Cloud Services and taking all necessary steps to maintain appropriate security, protection and backup of Your Content.

7.2. **Protected Health Information.** You are not permitted to store or process any patient, medical or other protected health information (as defined under the Health Insurance Portability and Accountability Act, as supplemented and amended) using the TiDB Cloud Services unless you enter into a Business Associate Agreement with us. Notwithstanding anything to the contrary in this CSA or applicable Law, unless a Business Associate Agreement has been entered into by you and us, we will have no liability hereunder with respect to your use or processing of any protected health information. Upon execution by the parties of a Business Associate Agreement, its terms are hereby incorporated by reference into this CSA.

7.3. PingCAP will use commercially reasonable efforts, no less rigorous than generally accepted industry standards and requirements by applicable Laws, to maintain appropriate administrative and technical safeguards for protection of the security, confidentiality and integrity of Your Content. The security procedures implemented by PingCAP include: (a) strict access control to Your Content; (b) encryption of Your Content when stored or being transmitted; and (c) risk management processes designed for data security. We and our Affiliates may perform certain activities ancillary to the TiDB Cloud Services (e.g., administration, maintenance, support, disaster recovery, data processing, etc.) from locations or through the use of subcontractors throughout the world; *provided* that, notwithstanding any such subcontracting, PingCAP will at all times remain responsible for the provision of the TiDB Cloud Services.

7.4. PingCAP will not (a) disclose Your Content except as expressly permitted in writing by you (including pursuant to this CSA) or (b) access Your Content except to provide the TiDB Cloud Services and prevent or address service or technical problems, or at your request in connection with technical support matters. In the event of any data breach or other incident which would compromise the security of Your Content or if Your Content has been or is reasonably expected to be subject to a use or disclosure not authorized by this CSA, PingCAP shall (i) promptly notify you in writing of the occurrence of such incident; (ii) conduct a reasonable investigation and analysis of such incident; and (iii) develop and implement an appropriate remedial plan to the extent such cause is within PingCAP's control.

7.5. The parties will comply with the DPA which is incorporated by reference into this CSA.



## 8. Indemnification

8.1. **Indemnity by PingCAP.** PingCAP will (a) defend you from and against any claim initiated by a third party alleging that the TiDB Cloud Services or your use thereof in accordance with this CSA infringes such third party's IP Rights and (b) indemnify and hold you harmless from and against any liabilities, damages, costs and expenses (including reasonable attorneys' fees) awarded against you or agreed in settlement by us arising out of or result from such the third-party claim; *provided, however*, that the foregoing shall not apply with respect to any such claim to the extent arising from your use of the TiDB Cloud Services in combination with any other software, service or technology not provided by PingCAP. Should the TiDB Cloud Services become or, in PingCAP's reasonable opinion be likely to become, the subject of any such claim, PingCAP may, at its option and expense: (i) procure for you the right to continue to use the TiDB Cloud Services as contemplated by this CSA; (ii) replace or modify the TiDB Cloud Services to render its use in accordance with this CSA non-infringing; or (iii) with thirty (30) days' notice to you, terminate this CSA and refund to you, in the same currency that the fees were paid by you, any prepaid fees covering the remainder of the term after the termination date.

8.2. **Indemnity by You.** You will (a) defend PingCAP from and against any claim by a third party arising from or relating to: (i) Your Content, including its use and any combination of Your Content with other software, services, technology, data or processes, including any such claim involving alleged infringement or misappropriation of IP Rights; (ii) your use of the TiDB Cloud Services (including any activities under your account and any use thereof by your employees and personnel); (iii) any product, service or technology used by you in connection with or related to the TiDB Cloud Services; or (iv) any breach of this CSA or violation of applicable Law by you, in each case of (i)-(iv), to the extent that such third-party claim is not subject to PingCAP's indemnity obligations in Section 8.1 and (b) indemnify and hold PingCAP harmless from and against any liabilities, damages, costs and expenses (including reasonable attorneys' fees) awarded against PingCAP or agreed in settlement by you arising out of or resulting from such the third-party claim.

8.3. **Indemnity Procedures.** In the event of any potential indemnity obligation under this Section 8, the indemnified party will: (a) promptly notify the indemnifying party in writing of the third-party claim in accordance with Section 15.5; (b) provide the indemnifying party with sole control and authority over the investigation, defense and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense; and (c) upon request of the indemnifying party, and at the indemnifying party's expense, provide all cooperation reasonably requested by the indemnifying party. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 8 shall not relieve the indemnifying party of its obligations under this Section 8 except to the extent that the indemnifying party was actually prejudiced by such delay or failure to provide notice in accordance with this Section 8.3. The indemnifying party may not settle any claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials) or require any admission of fault by the indemnified party, without the indemnified party's prior written consent, which consent is not to be unreasonably withheld, conditioned or delayed. Any indemnification obligation under this Section 8 will not apply if the indemnified party settles or



makes any admission with respect to a claim without the indemnifying party's prior written consent.

8.4. This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim or demands arising out of, or in any way related to, this CSA.

## **9. Representations & Warranties; Disclaimers**

9.1. Each Party warrants that it has the authority and right to enter into this CSA and that this CSA constitutes a valid and binding agreement between the Parties.

9.2. PingCAP warrants that the TiDB Cloud Services will operate in substantial conformity with the applicable documentation. If PingCAP is unable to correct any reported nonconformity with this warranty, you may terminate this CSA and, as your sole remedy, you will be entitled to receive a refund of any prepaid fees covering the remainder of the term after the termination date. This warranty will not apply if the error or non-conformance was caused by misuse of the TiDB Cloud Services, any modifications to the TiDB Cloud Services by anyone other than PingCAP, or third-party hardware, software, or services used in connection with the TiDB Cloud Services.

9.3. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.2 OR THE SLA, (a) THE TIDB CLOUD SERVICES AND ITS FUNCTIONALITY ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS. PINGCAP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PINGCAP OR ITS REPRESENTATIVES SHALL BE DEEMED TO CREATE A WARRANTY AND (b) NEITHER PINGCAP NOR ITS REPRESENTATIVES REPRESENT OR WARRANT THAT THE TIDB CLOUD SERVICES WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, ACCURATE OR COMPLETE, THAT THE TIDB CLOUD SERVICES WILL COMPLY WITH ANY PARTICULAR REGULATORY REQUIREMENTS OR THAT PINGCAP WILL CORRECT ANY PARTICULAR BUGS OR ERRORS. YOU ACKNOWLEDGE THAT WE CANNOT GUARANTEE (i) THE SECURITY OF OUR SYSTEMS OR (ii) THE QUALITY OR ACCURACY OF ANY PARTICULAR RESULTS WITH RESPECT TO YOUR USE OF THE TIDB CLOUD SERVICES.

## **10. Limitations of Liability**

10.1. EXCEPT TO THE EXTENT THE FOLLOWING LIMITATION OF LIABILITY IS PROHIBITED BY LAW, PINGCAP'S TOTAL LIABILITY TO YOU SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY YOU UP TO A MAXIMUM AMOUNT OF THE FEES (EXCLUSIVE OF TAX) PAID BY YOU TO PINGCAP UNDER THE APPLICABLE ORDER FORM; *PROVIDED* THAT, REGARDLESS OF ANY LAW, NO CLAIM OR CAUSE OF ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS CSA MAY BE BROUGHT BY YOU MORE THAN TWELVE (12) MONTHS AFTER YOU BECOME AWARE OF, OR SHOULD REASONABLY HAVE BECOME AWARE OF, THE FACTS GIVING RISE TO THE CAUSE OF ACTION. WITHOUT LIMITING THE FOREGOING, NEITHER PINGCAP NOR ANY OF ITS LICENSORS SHALL BE LIABLE TO YOU FOR PERSONAL INJURY, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES, OR FOR DAMAGES FOR LOSS OR INTERRUPTION OF BUSINESS, LOSS OF DATA, LOSS OF GOODWILL OR LOST PROFITS, UNDER ANY THEORY OF LIABILITY, INCLUDING CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THIS CSA, EVEN IF PINGCAP HAS BEEN ADVISED OF THE RISK OF SUCH DAMAGES.

10.2. THE LIMITATIONS SET FORTH IN THIS SECTION 10 WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION AND IN THE OTHER PROVISIONS OF THIS CSA AND THE ALLOCATION OF RISK HEREIN ARE ESSENTIAL ELEMENTS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH PINGCAP WOULD NOT HAVE ENTERED INTO THIS CSA.

10.3. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

## **11. Nondisclosure**

11.1. PingCAP and you may have access to Confidential Information of the other party. Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidentiality of similar nature (but not less than a reasonable degree of care) to not (a) use any Confidential Information of the other party for any purpose other than in connection with the provision or use, as applicable, of the TiDB Cloud Services and (b) except as otherwise agreed by the disclosing party, disclose the other party's Confidential Information to any third party other than to the receiving party's Affiliates and its and their employees and contractors who require access for purposes consistent with this CSA and who are bound by confidentiality obligations that are at least as protective of the Confidential Information as the terms set forth herein. In addition, each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental body as required by Law; *provided* that, to the extent legally permitted, the receiving party provides the disclosing party with prior written notice and cooperates in any effort to seek confidential treatment of any such Confidential Information.



11.2. Each party, as the receiving party, acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving party, the disclosing party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11.3. The confidentiality obligations set forth in this Section 11 shall continue for a period of five (5) years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; *provided, however*, that PingCAP will protect the confidentiality of Your Content stored in the TiDB Cloud Services for as long as such data remains in the TiDB Cloud Services or otherwise in PingCAP's possession or control.

## **12. Export; Commercial Computer Software**

12.1. The TiDB Cloud Services utilize software and technology or provide access to software, technology, or technical information that may be subject to export control laws, conventions, and regulations, including the United States Export Administration Regulations and other rules and regulations of the Bureau of Industry and Security of the United States Department of Commerce and the rules and regulations of the Office of Foreign Assets Control of the United States Department of the Treasury's US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the TiDB Cloud Services or the software, technical information, or technology included therein to, or make the TiDB Cloud Services or the software, technical information, or technology included therein accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by Law. You shall comply with all Laws prohibiting transfers, exports and re-exports to certain end-users and destinations or for certain end-uses (including nuclear, chemical, or biological weapons proliferation, or development of missile technology), unless written authorization is obtained from the appropriate government. PingCAP may suspend performance of the TiDB Cloud Services in its sole discretion if PingCAP believes that you are in violation or threatened violation of applicable Laws.

12.2. PingCAP provides the TiDB Cloud Services, including all related software and technology, for ultimate federal U.S. government end use solely in accordance with the following: Government technical data and software rights related to the TiDB Cloud Services which include only those rights customarily provided to the public as defined in this CSA. This customary commercial license is provided in accordance with DFARS 227.7201 through 227.7202-4, DFARS 252.227-7015, FAR, 12.211, FAR 12.212, FAR 27.405-3, FAR 52.227-19, or FAR 52.227-14 (ALT III), or successor provisions, as applicable. If a U.S. federal government agency has a need for rights not granted under this CSA, it must negotiate with PingCAP to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **13. Force Majeure**

Neither party shall be responsible for failure or delay of performance if caused by any cause beyond such party’s reasonable control, including war, hostility, or sabotage, catastrophe, acts of terrorism (including cyberterrorism), acts of God, pandemic, epidemic, electrical or telecommunication (including Internet) outage, fire, explosion, earthquake, flood, severe storm, strike, embargo, labor dispute, quarantine, acts of civil or military authority, acts or omissions of Internet traffic carriers, acts or omissions of regulatory or governmental bodies (including the passage of Laws, the denial or cancellation of any export, import or other license, or other acts of government that impact the delivery of any services). Both parties will use reasonable efforts to mitigate the effect of any such force majeure event. If such an event continues for more than thirty (30) days, either party may cancel unperformed services and affected orders upon written notice. This Section 13 does not excuse either party’s obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for products and services ordered or delivered hereunder.

## 14. Governing Law and Claims

This CSA, and any claim, controversy or dispute related to this CSA, are governed by and construed in accordance with the following Laws, without regard to any choice or conflicts of law provisions that would mandate the application of the Laws of any other jurisdiction. Any dispute, claim, suit, action or proceeding arising out of or relating to this CSA or its subject matter, including breach thereof, will be finally settled exclusively as set forth below. The United Nations Convention for the International Sale of Goods does not apply to this CSA.

<b>PingCAP Contracting Entity</b>	<b>Governing Law</b>	<b>Dispute Resolution Forum</b>
PingCAP (US), Inc.	California, U.S.A.	1. If you are located in USA, you irrevocably and unconditionally submit to the exclusive jurisdiction and venue of the state and federal courts in San Mateo, California, USA for the purpose of any dispute, controversy or claim arising out of or in connection with this CSA; 2. If you are not located in USA, any dispute arising out of or in connection with this CSA, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the American Arbitration Association’s International Centre for Dispute Resolution in accordance with its International Arbitration Rules, which rules are deemed to

		be incorporated by reference in this clause. The seat of the arbitration shall be San Mateo, California, USA. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The award of the arbitrator shall be final and binding upon the parties thereto. Judgment upon any award may be entered in any court having jurisdiction over any party or any of its assets.
PingCAP Kabushiki-Kaisha	Japan	The Tokyo District Court shall have the exclusive jurisdiction.
PingCAP Pte. Ltd.	Singapore	1. If you are located in Singapore, a competent court in Singapore shall have the exclusive jurisdiction; and 2. If you are not located in Singapore, any dispute arising out of or in connection with this CSA, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.

## 15. Miscellaneous

15.1. **Entire Agreement.** This CSA, together with the SLA, Privacy Policy, DPA and, if applicable, the Business Associate Agreement, comprises the entire agreement between you and us relating to the subject matter hereof. This CSA supersedes all prior or contemporaneous representations, understandings, agreements or communications between you and PingCAP, whether written or verbal, regarding the subject matter hereof. This CSA takes precedence over any additional or different terms or conditions provided by you, including those contained in any purchase order, which shall not apply or have any legal effect, and to which notice of objection is hereby given by PingCAP.

15.2. **Independent Contractors.** PingCAP and you are independent contractors, and each party agrees that no partnership, joint venture, or agency relationship is created between the parties hereunder. Neither party may bind the other party or incur obligations on the other party's behalf, and neither party's personnel are eligible for any form or type of benefits offered by the other party to its personnel.

15.3. **Assignment; Third-Party Beneficiaries.** You will not assign or otherwise transfer (including by operation of law) this CSA or any of your rights and obligations hereunder without our prior written consent. Any attempt to do so shall be null and void. PingCAP may assign or otherwise transfer (including by operation of law) this CSA or any of our rights or obligations hereunder to our Affiliates or in connection with a merger, change of control or sale of all or a



substantial portion of our assets without your prior consent. This CSA is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason hereof.

**15.4. Modifications to the CSA.** PingCAP may modify this CSA (including the SLA, Privacy Policy, DPA and Business Associate Agreement) at any time by posting a revised version on the Site or by otherwise notifying you in accordance with Section 15.5; By continuing to use the TiDB Cloud Services after the effective date of any modifications to this CSA, you agree to be bound by such modified terms.

**15.5. Notice.** Any notice, request, consent, claim, demand, or other communication to be given or delivered to a party under or by reason of a provision of this CSA shall be in writing in accordance with this Section 15.5. PingCAP may provide you with notice under this CSA by (a) posting a notice on the Site or (b) sending a message to the email address then associated with your account. Notices provided by posting on the Site will be effective upon posting and notices provided by email will be effective when PingCAP sends out the email. It is your responsibility to keep the email address associated with your account current. You may provide us with notice under this CSA by both (i) sending written notice in English to: Deal Management Team, 1250 Borregas Ave, Office 123, Sunnyvale, CA 94089 and (ii) sending a copy email to [deal-management@pingcap.com](mailto:deal-management@pingcap.com).

**15.6. Language.** All communications and notices made or given pursuant to this CSA must be in the English language. If any translation of the English language version of this CSA is provided, the English language version of this CSA will control in the event of any conflict.

**15.7. Interpretation.** For the purposes of this CSA: (a) any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; (b) the term “including” means “including without limitation” and is intended by way of example and not limitation; (c) all headings are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision hereof; (d) the word “or” is not exclusive; and (e) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this CSA as a whole.

**15.8. No Waivers.** The failure by PingCAP to enforce any right or provision of this CSA will not constitute a present or future waiver of such provision or right, nor will it limit our right to enforce such term at a later time. No waiver by PingCAP of any provision or right hereunder will be deemed a further or continuing waiver of such provision or right or a waiver of any other provision or right. Any waiver by PingCAP hereunder must be in writing to be effective.

**15.9. Severability.** If any provision of this CSA is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be limited to the minimum extent such that the remaining provisions of this CSA will continue in full force and effect.

## Schedule 1 AI-Powered Functions Terms of Use

These AI-Powered Functions Terms of Use (These “**Terms**“) constitute a legal agreement between PingCAP and you, which will apply only when you use any of the AI-Powered Functions or its associated Documentation (each defined as below) through your TiDB Cloud account. These Terms are in addition to, and supplement, the terms of the CSA, and in the event of any conflict with the CSA, these Terms shall prevail for your use of the AI-Powered Functions. Except as set forth herein, capitalized terms will have the meanings set forth in the CSA.

You must be at least 16 years old to use the AI-powered Functions. If you are under 18 you must have your parent or legal guardian’s permission to use the AI-powered Functions. You shall not provide AI-Powered Functions with any input including personal information of children under 16 or the applicable age of digital consent.

1. “**AI-Powered Functions**” means the AI powered editors and/or assistant services provided by PingCAP, including but not limited to Chat2Query and TiDB Bot.
2. “**Documentation**” means written technical information pertaining to AI-Powered Functions and made available by PingCAP.
3. **AI Suggestions.** AI-Powered Functions will provide suggestions (the “**AI Suggestions**“) based on your input. The AI Suggestions includes but is not limited to suggested SQL, suggested sample code, suggested guidance on database operation, trouble shooting and development. Your input includes but is not limited to your questions, instructions, code snippets and/or metadata of your database and tables.
4. **Code.** Code means the code you provide as input to AI-Powered Functions, including your modifications to AI Suggestions.
5. **Possible match with public code.** You acknowledge that the AI Suggestions provided to you are generated by AI and may match public code. It is entirely your decision whether to use AI Suggestions no matter as a whole or a part, together with your Code or not. If you decide to use AI Suggestions, we strongly recommend that you have an effective mechanism to prevent you from infringing on others’ rights which may be caused by the use of AI Suggestions.
6. **Enough Check before Running or Compile.** If you decide to use AI Suggestions, we strongly recommend that you take precautions to understand how the AI Suggestions work and ensure their suitability. Before you review it, you should not make the AI Suggestions run or compile automatically. You are solely responsible for determining the appropriateness of using AI Suggestions.
7. **Right to use AI Suggestions.** PingCAP grants you a worldwide, fully paid-up, non-exclusive, transferable and sublicensable right to use AI Suggestions. Your use of AI-Powered Functions is



subject to our Acceptable Use Policy as well as the [Terms of Use](#), [Usage Policies](#) and other relevant service terms of OpenAI.

8. **Warranty.** PingCAP makes no warranties for AI Suggestions generated by AI-Powered Functions. Except to the extent prohibited by law, PingCAP expressly disclaims all warranties for AI-Powered Functions, including, without limitation, any warranties of merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement.

9. **Data.** PingCAP will collect your input (including Code) to AI-Powered Functions to return AI Suggestions to you, and to train PingCAP's model to improve AI-Powered Functions. You acknowledge and agree to the [AI-Powered functions Privacy Statement](#).

10. **Indemnity.** You will defend, indemnify, and hold harmless PingCAP from and against any claims, losses, and expenses (including attorneys' fees) arising from or relating to your use of the AI-Powered Functions, including inputs you provided to AI-Powered Functions, your usage of AI Suggestions and your breach of these Terms or violation of applicable law.

11. **Liability.** In no event, shall PingCAP be liable to you for damages, including any direct, indirect, special, incidental, or consequential damages of any character out of the use or inability to use AI-Powered Functions (including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, third party's right infringement, or any and all other commercial damages or losses), even if PingCAP has been advised of the possibility of such damages. The foregoing shall be interpreted and have effect to the maximum extent permitted by applicable law.

12. **Application of Terms.** These Terms shall apply when you started to use any of the AI-Powered Functions, and cease to apply when you disable all of the AI-Powered Functions. The same applies when you resume using any of the AI-Powered Functions thereafter. We may terminate these Terms for any reason by posting notice to your account and/or to our website. Notwithstanding the foregoing, Sections 4, 5, 6, 7 and 9 shall survive the termination under this Section.

13. **Miscellaneous.** If any portion of these Terms is found to be void or unenforceable, the remaining provisions of these Terms will remain in full force and effect.