

# Enterprise Subscription License Agreement

This Enterprise Subscription License Agreement ("**Agreement**") is made and entered into by and between Couchbase, Inc. ("**Couchbase**") and Customer, and sets forth the terms under which Customer may use certain Couchbase software and/or receive certain consulting services under Orders governed by this Agreement.

Note that this Agreement cannot be changed without a mutually signed amendment. Couchbase will not in any way change the terms posted at the URL above. Any Orders or SOWs placed under this version of the Agreement may only be modified by a mutually signed amendment.

## 1. Definitions.

1.1 Capitalized terms used herein shall have the following definitions:

**"Commercial Details"** means the identified product(s), quantity (number of Licensed Nodes and/or Licensed Devices), price, server size metric, support level, subscription start and end date, and professional service description.

**"Core"** means the virtual representation of one or more hardware threads. A hardware thread can be either a physical core or a hyper-threaded core.

**"Cross-Data Center Replication"** means an asynchronous data replication system, involving replicating active data to multiple, geographically diverse data centers or data repositories.

**"Customer"** means the person, legal entity or organization, as applicable, accepting the terms and conditions hereunder and/or entering into an Order or SOW that references this Agreement.

**"Documentation"** means the technical user guides or manuals provided by Couchbase related to the Software.

**"Fee"** means any sum, fee(s) or charges specified on an Order, SOW and/or payable under this Agreement.

**"Licensed Device"** means a unique device (such as a mobile device, laptop, or IoT device) that stores data locally using the "Couchbase Lite" product during a rolling thirty (30) day period.

**"Licensed Node"** means an instance of the Software running on a server, including a physical server, server blade, virtual machine, software container, or cloud server (whether in an testing, development, or production environment).

**"Order"** means a transaction document (such as a signed sales quote) identifying the Professional Services, Software, the number of Licensed Nodes and/or Licensed Devices, the applicable Fee and Subscription Term.

**"Privacy Notice"** means the privacy notice located at <https://www.couchbase.com/privacy-policy> (and any successor or

related locations designated by us), as it may be updated by us from time to time.

**"Production Deployment"** means all Licensed Nodes and Licensed Devices within a particular cluster or clusters that are licensed to support a live workload or application.

**"Professional Services"** means consulting services, training, and other professional services as well as the resulting reports, written materials, or other outputs provided to Customer as part of an engagement as identified in the applicable Order or SOW.

**"RAM"** or Random Access Memory, means the main memory used to store data for quick access by a computer's processor.

**"Software"** means the applicable Couchbase product as reflected in an Order.

**"SOW"** means a transaction document or Order identifying Professional Services purchased.

**"Subscription Term"** means the period stated on an Order or SOW, if any, during which Customer is licensed to use the Software and Documentation and receive the Professional Services and Support

**"Support"** means the technical support and Software maintenance services (with the right to receive Software updates and upgrades made generally available by Couchbase) as described in the then-current Couchbase support services terms at [www.couchbase.com/support-policy](http://www.couchbase.com/support-policy).

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

## **2. License Grant.**

2.1 During the Subscription Term, and subject to Customer's compliance with the terms and conditions of this Agreement, Couchbase grants to Customer a revocable, non-exclusive, non-transferable, non-sublicensable (except as explicitly set forth herein or an Order), fee-bearing license to install and use the Software and Documentation only for Customer's own internal use and limited to the type, size, and number of Licensed Nodes (and where applicable the number of Licensed Devices) paid for by Customer and in accordance with any additional license terms specified in the applicable Order, and for no other purposes whatsoever.

2.2 Tools, Connectors, and Third Party Products. The Software may: (i) include certain components developed and owned by Couchbase (**"Couchbase Components"**) which connect to products, components, files, programs, databases, content sources or other materials developed and owned by third parties (**"Third Party Products"**); and (ii) include or be distributed with Third Party Products. Customer's use of Couchbase Components and Third Party Products may be subject to additional terms and conditions and third party license terms as set forth in Exhibit A of this

Agreement. Further, Third Party Products may be subject to third party licenses provided by such third party or executed between Customer and such third party (in each case, a **"Third Party License"**). Couchbase has not developed or published and does not own, control or license such Third Party Products. Customer shall be solely responsible for (i) its compliance with any such Third Party License in its use of any Third Party Products and (ii) the confidentiality, security, and integrity of any content or data Customer chooses to transfer to any Third Party Products. Couchbase shall have no responsibility or liability whatsoever for the installation, operation, support functionality or otherwise related to or arising out of any Third Party Products, including any loss or compromise of data.

### **3. Customer Responsibilities.**

3.1 Customer shall not (and shall not allow any third party to):

- (a) copy or use the Software, Documentation, or any related reports, technologies or services in any manner except as expressly permitted in this Agreement;
- (b) use or deploy the Software in excess of the number of Licensed Nodes and Licensed Devices for which Customer has paid the applicable Fee;
- (c) use or deploy the Software in excess of the number of Cores and RAM for each Licensed Node for which Customer has paid the applicable Fee;
- (d) transfer, sell, rent, lease, lend, distribute, market, commercialize or sublicense the Software, Documentation, or any related reports, technologies or services to any third party, provided that Customer may use the Software in connection with an application made available to Customer's end users as long as they cannot access the Software directly;
- (e) use the Software for providing time-sharing services, service bureau services or as part of an application services provider or as a service offering primarily designed to offer the functionality of the Software;
- (f) reverse engineer, disassemble, or decompile the Software (except to the extent such restrictions are prohibited);
- (g) alter, modify, enhance or prepare any derivative work from or of the Software and Documentation;
- (h) alter or remove any proprietary notices in the Software, Documentation or any related reports, technologies or services;
- (i) use or transfer Licensed Nodes and/or Licensed Devices designated to a particular Production Deployment or project to another or new Production Deployment or project; or
- (j) use the Software, Documentation or any related reports, technologies or services for the purposes of, or publicly display or communicate the results of, benchmarking or competitive analysis of the Software, or developing, using, providing, or supporting products or services competitive to

Couchbase.

3.2 Customer shall comply with all applicable laws in connection with its use of the Software, Professional Services and Support, including but not limited to applicable international and domestic export controls, including economic sanctions, laws, regulations, or orders that apply to Customer, the Software the Documentation and any related reports, technologies or services ("**Export Laws**"). In furtherance of this obligation, Customer shall ensure that: (a) Customer does not use the Software, technology or services in violation of any Export Laws; and (b) it does not provide access to the Software, technology or services to (i) persons on the U.S. Department of Commerce's Denied Persons List or Entity List, or the U.S. Treasury Department's list of Specially Designated Nationals, (ii) military end-users or for military end-use, or (iii) parties engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

3.3 If Customer does not comply with the license terms or the foregoing restrictions, Couchbase may (without refund or credit, if applicable, and without prejudice to any other rights or remedies Couchbase may have under this Agreement or at law), at its sole discretion: (i) terminate this Agreement (including all active Orders and SOWs hereunder) thereby revoking Customer's license to the Software and Documentation, or (ii) suspend Customer's license to the Software and Documentation until Customer comes into compliance with such terms and restrictions.

3.4 Customer acknowledges that a breach of its obligations to Couchbase under this Agreement, other than the payment obligations, will result in irreparable and continuing damage for which monetary damages may not be sufficient, and agrees that Couchbase will be entitled to receive in addition to its other rights and remedies hereunder or at law, injunctive and/or other equitable relief. All remedies of Couchbase set forth in this Agreement are cumulative and in addition to, and not in lieu of any other remedy of Couchbase as law or in equity.

#### **4. Services.**

4.1 The parties may agree to have Couchbase provide Professional Services to Customer, which shall be set forth on an Order or SOW signed by both parties. Such Professional Services shall be governed by the terms and conditions of this Agreement.

4.2 Professional Services and any related reports, technologies or services are accepted when delivered unless otherwise set forth in an Order or SOW. Couchbase may engage qualified subcontractors to provide the Professional Services, provided that Couchbase remains responsible for any

subcontractor's compliance with this Agreement. Couchbase grants to Customer a royalty-free, perpetual, non-exclusive, non-transferable, non-sublicensable license to use and reproduce any reports for Customer's internal business purposes.

4.3 Unless explicitly set forth in an Order or SOW, any Professional Services purchased under this Agreement shall expire upon the end of the Subscription Term. Any unused Professional Services after the end of the Subscription Term shall expire without refund of any prepaid Fees. For Professional Services that would have been invoiceable in arrears, Couchbase will provide a final invoice for the unused Professional Services in accordance with this Agreement. Unless otherwise stated in an Order, Customer shall pay Couchbase's reasonable travel and incidental expenses incurred in conducting (in relation to the Professional Services or otherwise) on-site activities at Customer's site upon receiving an invoice from Couchbase.

## **5. Proprietary Rights.**

5.1 This Agreement does not transfer any right, title or interest in any intellectual property to any party, except as expressly set forth in this Agreement. The Software (including the source code, any modifications, improvements, enhancements or derivatives thereto), and all Documentation and outputs resulting from Professional Services, are and shall remain the sole property of Couchbase and its licensors. Except for the license rights granted under this Agreement, Couchbase and its licensors retain all right, title and interest in and to the Software, Documentation, and Professional Services (including resulting reports or written materials), including all intellectual property rights therein and thereto.

5.2 The Software may include open source software components and such open source components shall be licensed to Customer under the terms of the applicable open source license conditions and/or copyright notices that can be found in the licenses files, Documentation or materials accompanying the Software.

5.3 If Customer provides any suggestions or feedback regarding the Software, Documentation, Support, or Professional Services, Couchbase may use such information without obligation to Customer, and Customer hereby irrevocably assigns to Couchbase all right, title, and interest in that feedback or those suggestions.

5.4 If Customer is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following:

(a) for acquisition by or on behalf of civil agencies, as necessary to obtain protection as “commercial computer software” and related documentation in accordance with the terms of this Agreement and as specified in Subpart 12.1212 of the Federal Acquisition Regulation (FAR), 48 C.F.R.12.1212, and its successors; and

(b) for acquisition by or on behalf of the Department of Defense (DOD) and any agencies or units thereof, as necessary to obtain protection as “commercial computer software” and related documentation in accordance with the terms of this Agreement and as specified in Subparts 227.7202-1 and 227.7202-3 of the DOD FAR Supplement, 48 C.F.R.227.7202-1 and 227.7202-3, and its successors, manufacturer is Couchbase, Inc.

## **6. Support.**

6.1 Couchbase will provide Customer with the level of Support indicated on the applicable Order and paid for by Customer. For all Licensed Nodes and Licensed Devices within a specific Production Deployment, all such nodes and instances must be at the same level of Support, including any that are used for disaster recovery or backup that are associated with the specific Production Deployment. For the avoidance of doubt, each specific Production Deployment can have its own level of Support. Similarly, all Licensed Nodes and Licensed Devices in a development or test environment must be at the same level of Support but such Licensed Nodes and Licensed Devices may be at a different support level than the Production Deployment(s).

6.2 When using the Cross-Data Center Replication feature, Customer must have all Licensed Nodes and Licensed Devices at the same level of Support for all instances on all sides of the replication connection, including if one side of the connection is only used for disaster recovery or backup.

6.3 Couchbase may modify the terms of Support from time to time, provided that such modifications do not materially and adversely affect Customer’s Support subscription.

## **7. Fees.**

7.1 Customer will pay Couchbase the Fees in advance, within thirty (30) days of the date of the invoice, unless explicitly otherwise indicated in the applicable Order or SOW. If Customer purchases licenses or services related to the Software through an approved third-party partner, then the applicable agreement with that third-party will govern with respect to Customer for the appropriate payment terms, provided that such third-party agreement shall not override or attempt to override the payment terms in place between Couchbase and such approved third-party partner. All other terms and restrictions with respect to the use of the Software shall continue to apply to Customer. All payments are non-cancelable, not subject to the Limitation of

Liability in Section 12 below, and shall be made in the currency stated on the applicable Order. Fees are non-refundable except to the extent expressly provided for in this Agreement. Late payments will bear interest at the lesser of one- and one-half percent (1 ½%) per month or the maximum rate allowed by applicable law. Customer will reimburse Couchbase for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts.

7.2 All Fees payable by Customer are exclusive of applicable taxes and duties (such as, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax (collectively, the "**Transaction Taxes**"). If applicable, Couchbase may charge and Customer shall pay all Transaction Taxes that Couchbase is legally obligated or authorized to collect from Customer. Customer will provide such information to Couchbase as reasonably required to determine whether Couchbase is obligated to collect Transaction Taxes from Customer. Couchbase will not collect, and Customer will not pay, any Transaction Taxes for which Customer furnishes a properly completed exemption certificate or a direct payment permit certificate for which Couchbase may claim an available exemption from such Transaction Taxes. All payments made by Customer to Couchbase under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Couchbase is equal to the amount then due and payable under this Agreement. Couchbase will provide Customer with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

7.3 Customer is obligated to pay all applicable Fees without any requirement for Couchbase to provide a purchase order ("**PO**") number on Couchbase's invoice (or otherwise). If Customer sends Couchbase a PO in lieu of executing an Order, the PO will be deemed a binding contract offer which Couchbase may accept by (i) signing the PO or (ii) sending a written order acknowledgment of acceptance of the PO (thereby forming a mutually agreed Order governed by this Agreement). In any event, only the Commercial Details listed on PO shall be considered part of the Order created (exclusive of any pre-printed terms on the PO). Any other terms on the PO which either (i) conflict with the terms of this Agreement, or (ii) are not agreed under this Agreement, will be void and without effect, even if Couchbase signs the PO. All accepted POs will automatically be governed by this Agreement (even if the PO does not reference this Agreement). It is

expressly agreed that Section 7 shall apply in respect of any PO sent by Customer and accepted by Couchbase.

## **8. Records Retention and Audit.**

8.1 During any Subscription Term and for at least one (1) year thereafter, Customer shall maintain complete and accurate records to permit Couchbase to verify Customer's compliance with this Agreement (including the number of Licensed Nodes and Licensed Devices used by Customer as well as Customer's compliance with its obligations post-termination or expiration), and provide Couchbase with such records within ten (10) days of request.

8.2 Every three (3) months within a Subscription Term (or on another cadence as mutually agreed between the parties), Customer shall self-certify to Couchbase the total number of Licensed Nodes and Licensed Devices currently deployed and used by Customer in each cluster running in a production, test, or development environment. Such self-certification shall be in accordance with Couchbase's instruction and in the form of either a (i) written report signed by an authorized representative of Customer or (ii) copy of an automatically generated report created by Customer. Couchbase will review such reports and determine if any true up to the applicable Order is required. Additional fees for any excess usage shall be calculated based on the fees specified in the applicable Order for the applicable Licensed Node or Licensed Device size and type, and prorated, as applicable. If the excess usage includes nodes or device sizes or types for which fees are not specified in the applicable existing Order, then the (additional) fees shall be calculated based on Couchbase's list price in effect at the time and prorated, as applicable.

8.3 Upon at least thirty (30) days prior written notice, but no more than once in any (12) twelve month period, Couchbase may audit Customer's use of the Software solely as necessary to verify Customer's compliance with the terms of this Agreement during the Subscription Term and for one (1) year thereafter. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. Customer will provide Couchbase with access to the relevant Customer records and facilities.

## **9. Confidentiality.**

9.1 Customer and Couchbase will maintain the confidentiality of Confidential Information. "**Confidential Information**" means any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure, including the Software and any non-public technical and business information (including Commercial



Details). Confidential Information does not include information that (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality to the disclosing party; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

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

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

## **10. DISCLAIMER OF WARRANTY.**

10.1 THE SOFTWARE, DOCUMENTATION AND ANY PROFESSIONAL SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING THAT THE SOFTWARE, DOCUMENTATION OR PROFESSIONAL SERVICES PROVIDED HEREUNDER WILL MEET CUSTOMER'S REQUIREMENTS, OPERATE IN THE COMBINATIONS CUSTOMER MAY SELECT FOR USE, WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE ERRORS OR DEFECTS WILL BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COUCHBASE, ANY OF ITS AFFILIATES OR LICENSORS (COLLECTIVELY, THE "COUCHBASE PARTIES") HEREBY DISCLAIM ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. THE COUCHBASE PARTIES DO NOT WARRANT THAT THE SOFTWARE IS DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE.

## **11. Indemnification of Third-Party Claims.**

11.1 Couchbase Indemnification. Subject to the terms of this Section 11, Couchbase will indemnify and defend Customer from and against any damages finally awarded against Customer resulting from any third-party claims that the non-open source software components of the Software, Documentation or Professional Services infringe any valid, enforceable United States patent, United States copyright, or United States trademark; provided that: (a) Customer promptly notifies Couchbase of the claim; (b) Customer gives Couchbase all necessary information regarding the claim and reasonably cooperates with Couchbase; (c) Customer allows Couchbase exclusive control of the defense and all related settlement negotiations; (d) Customer does not admit fault or liability with respect to this Agreement, any Order, Customer's actions or those of Couchbase; and (e) Customer agrees any damage award does not include any Fees owed to Couchbase.

11.2 Enjoinment. Without limiting the forgoing, and notwithstanding anything to the contrary in this Agreement, if use of the Software is enjoined, or Couchbase determines that such use may be enjoined, Couchbase will, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software; (ii) replace or modify the affected Software such that it does not infringe; or (iii) if either option (i) or (ii) is not commercially feasible in Couchbase's reasonable opinion, as applicable, terminate the affected portions of an Order and refund Customer any prepaid but unused Fees for the affected Software.

11.3 Customer Indemnification. Customer will indemnify and defend the Couchbase Parties from and against any damages awarded against Couchbase in connection with any third-party claim arising out of (a) Customer's use, operation or combination of the Software, including Customer's data or content, that infringes any United States patent, United States copyright or United States trademark; (b) use of, or inability to use the Software by Customer, or any third party that receives or obtains access to or relies on the Software or any component thereof from or through (directly or indirectly) Customer; and (c) any breach by Customer of any provisions of this Agreement, provided that: (i) Couchbase promptly notifies Customer of the claim; (ii) Couchbase gives Customer all necessary information regarding the claim and reasonably cooperates with Customer; (iii) Couchbase allows Customer exclusive control of the defense and all related settlement negotiations; (iv) Couchbase does not admit fault or liability with respect to this Agreement, any Order, Couchbase's actions or those of Customer; and (v) Couchbase agrees any damage award does not include any Fees paid to Couchbase.

11.4 Exclusions. Couchbase will have no liability or obligation to indemnify under Section 11.1 for any infringement claim arising out of (i) modifications made by a party other than Couchbase, to the extent a claim would not have occurred but for such modifications, (ii) the use of any non-current version of the Software provided that Couchbase has given reasonable written notice to Customer to migrate to the then-current version of the Software (unless the infringing portion is also in the then-current, unaltered release), (iii) the use, operation or combination of the Software with non-Couchbase programs, data, or equipment to the extent such infringement would have been avoided but for such use, operation or combination, (iv) any open source software components, (v) use in violation of this Agreement or in non-compliance with the applicable Documentation, (vi) Customer's continuation of its allegedly infringing activity after being notified thereof or after being provided a replacement or modification by Couchbase that would have avoided the alleged infringement; or (vii) Couchbase's compliance with any materials, designs, specifications or instructions provided by Customer. The Couchbase indemnification obligations will also not apply to any claim to the extent it arises from any matter for which Customer is obligated to indemnify Couchbase pursuant to Section 11.3.

#### 11.5 Sole Remedy.

THE TERMS OF THIS SECTION 11 CONSTITUTE THE ENTIRE LIABILITY OF THE COUCHBASE PARTIES, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD-PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

### **12. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COUCHBASE PARTIES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR: (A) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; OR (B) THE COST OF PROCURING SUBSTITUTE PRODUCTS OR PROFESSIONAL SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, OR THE USE OF OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION OR THE PROFESSIONAL SERVICES; OR (C) DAMAGES OR OTHER LOSSES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COUCHBASE PARTIES' AGGREGATE LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNT OF FEES PAID OR DUE AND OWING UNDER THE

APPLICABLE ORDER(S) BY CUSTOMER TO COUCHBASE THAT ARE ATTRIBUTABLE TO THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION FIRST GIVING RISE TO THE LIABILITY. The parties expressly acknowledge and agree that Couchbase has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Couchbase and Customer and form a basis of the bargain between the parties.

### **13. Term and Termination.**

13.1 This Agreement is effective as of the date of Customer's acceptance of this Agreement (the "**Effective Date**") and will continue until: (i) ninety (90) days after all of Customer's active Orders and SOWs hereunder have expired whether either party gives notice or not, or (ii) either party terminates this Agreement as set forth in this Section, provided that the parties' rights and obligations under the provisions listed in Section 13.4 shall survive any termination for all of the foregoing subsections (i) through (ii). This Agreement shall govern: (i) Orders or SOWs that reference this Agreement, and (ii) any POs submitted by Customer as set forth in Section 7.3. The Subscription Term for each Order or SOW shall commence and have the duration as set forth in the applicable Order or SOW.

13.2 Subject to Couchbase's rights under Section 3 above, either party may terminate the applicable Order or SOW, if the other party materially breaches its obligations thereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach. Customer's obligation to make a payment of any outstanding, unpaid fees shall survive termination or expiration of an Order, SOW or this Agreement.

13.3 Upon termination or expiration of all active Orders, SOWs or this Agreement, Customer will (i) promptly return or destroy the Documentation (except as explicitly permitted to be retained by Customer in a SOW) and all copies and portions thereof, in all forms and types of media, and (ii) uninstall the Software as described in the then-current Couchbase uninstallation instructions (located <https://docs.couchbase.com/manual/uninstall/>). Upon request, Customer shall provide written certification signed by an officer of Customer of cessation of use and destruction as set forth herein within five (5) calendar days of request.

13.4 The following sections will survive termination or expiration of any Order, SOW and/or this Agreement: Section 2.2 (Tools, Connectors, and Third Party Products), Sections 3 (Customer Responsibilities), 5 (Proprietary

Rights), 7 (Fees), 8 (Records Retention and Audit), 9 (Confidentiality), 10 (Disclaimer of Warranties), 11 (Indemnification), 12 (Limitation of Liability), 13 (Term and Termination), and 14 (General).

#### **14. General.**

14.1 Neither party shall be liable for any delay or failure in performance (except for any payment obligations by Customer) due to causes beyond its reasonable control.

14.2 Customer agrees that Couchbase may include the Customer's name and logo in client lists that Couchbase may publish for promotional purposes from time to time and grants Couchbase a limited license to its trademark solely for this purpose, provided that Couchbase complies with Customer's branding guidelines.

14.3 Customer may not assign or transfer its rights or obligations under this Agreement, an Order, or a SOW, in whole or in part, by operation of law or otherwise, without Couchbase's prior written consent. Any attempt to assign or otherwise transfer this Agreement, an Order, or SOW without such consent will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

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

14.5 Any notice or communication provided by Couchbase under this Agreement may be provided by posting a notice on the Couchbase website, or by mail or email to the relevant address associated with Customer's account, if available. Any notice or communication provided by Customer to Couchbase under this Agreement shall be provided to Couchbase by certified mail, return receipt requested, to Couchbase, Inc., Attn: Legal Dept, 3250 Olcott Street, Santa Clara, CA 95054, United States.

14.6 This Agreement shall be governed by the laws of the State of California, U.S.A., excluding its conflicts of law rules. The parties expressly agree that the UN Convention for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Santa Clara County,

California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Except as otherwise set forth in this Agreement, Couchbase may modify this Agreement (including the Support terms) at any time by (i) posting a revised version on the Couchbase website or (ii) by otherwise notifying Customer in accordance with Section 14.5, and by continuing to use the Software after the effective date of any such modifications to this Agreement, Customer agrees to be bound by this Agreement, as modified. The date Couchbase last modified this Agreement is set forth at the end of this Agreement. Notwithstanding the foregoing, any Orders placed under this version of the Agreement may only be modified by a mutually signed amendment by the parties.

14.7 This Agreement incorporates the Privacy Notice by reference, and together with each Order and/or SOW constitute the entire agreement and understanding of the parties and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof, including any agreement on confidentiality previously executed by the parties. Furthermore, no additional or conflicting terms set forth on any other document shall have any force or effect and are hereby rejected unless expressly agreed upon by the parties' duly authorized representatives in writing. To the extent that any terms and conditions set forth in an Order or SOW conflict with the terms of this Agreement, the applicable terms of the Order or SOW shall prevail.

14.8 Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

14.9 The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties.

14.10 Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

14.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Signatures transmitted electronically or by facsimile shall be deemed original signatures.

## Additional Terms and Conditions for Couchbase Components and Third Party Products

Couchbase Component: Connector to Tableau Software, LLC  
Additional Terms and  
Conditions: [www.couchbase.com/toollicenses/tableau](http://www.couchbase.com/toollicenses/tableau)