DREMIO CLOUD
TERMS OF SERVICE

Last Updated: 02/17/2022

These Dremio Cloud Terms of Service (this "**Agreement**") form a legal agreement between the legal entity on behalf of which you are acting ("**Customer**") and Dremio Corporation, a Delaware corporation, having its principal place of business at 3970 Freedom Circle #110, Santa Clara, CA 95054 USA ("**Dremio**"), and govern Customer's access to and use of Dremio's fully-managed lakehouse platform ("**Dremio Cloud**") on each cloud service where Dremio directly provides customers with access to Dremio Cloud and related technical support or other professional services made available by Dremio.

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCESSING, DEPLOYING OR USING DREMIO CLOUD. BY SETTING UP CUSTOMER'S ACCOUNT FOR DREMIO CLOUD, USING ANY PORTION OF DREMIO CLOUD, OR EXECUTING THIS AGREEMENT OR AN ORDER OR ANOTHER INSTRUMENT THAT EXPLICITLY INCORPORATES THIS AGREEMENT, CUSTOMER ACCEPTS AND AGREES TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. The person setting up Customer's account represents to Dremio that he/she has the legal authority to bind Customer. Customer agrees that this Agreement is enforceable like any written agreement signed by Customer. This Agreement becomes effective as of the date Customer accepts this Agreement ("**Effective Date**").

1. **DEFINITIONS**

1.1.   "**Acceptable Use Policy**" means the acceptable use policy governing use of Dremio Cloud, made available at https://www.dremio.com/legal, as may be updated by Dremio.

1.2.   "**Affiliate**" means, with respect to a party, any person or entity that controls, is controlled by, or is under common control with such party, as of the Effective Date or subsequently during the Term, but only so long as such control exists. As used herein, "control" means ownership of more than 50% of the voting securities of such entity or the ability to direct managerial decisions or board decisions of such entity.

1.3.   "**Authorized Users**" means Customer's employees and authorized agents and service providers, in each case who are permitted to access and use Dremio Cloud on behalf of Customer in accordance with this Agreement.

1.4.   "**Cloud Service Provider**" means a cloud service provider on whose platform Dremio directly provides Dremio Cloud, as specified in the Documentation.

1.5.   "**Cloud Support Policy**" has the meaning set forth in Section 4.1.

1.6.   "**Confidential Information**" has the meaning set forth in Section 8.1.

1.7.   "**Control Plane**" means the multi-tenant, always-on service responsible for query planning and management, that is hosted and monitored by Dremio.

1.8.   "**Customer Cloud Environment**" means the cloud environment provided to Customer by the Cloud Service Provider into which Dremio deploys the Execution Plane.

1.9.   "**Customer Content**" means all Customer Data and Customer Results.

1.10.   "**Customer Data**" means the data residing in Customer's data lakes or otherwise Customer's control and made available by Customer or its Authorized Users for processing within Dremio Cloud or in connection with Support Services or Professional Services.

1.11.   "**Customer Results**" means any output Customer or its Authorized Users generate from their use of Dremio Cloud.

1.12.   "**Documentation**" means Dremio's standard end-user documentation for Dremio Cloud, as generally made available to its customers.

1.13.   "**DCU Credit**" means a credit for usage of Dremio Cloud equal to the Fees paid by Customer.

1.14.   "**Dremio Cloud Environment**" means the cloud environment used by Dremio to provide the Control Plane and certain other functionalities of Dremio Cloud, as described in the Documentation.

1.15.   "**Execution Plane**" means the elements of Dremio Cloud consisting of compute resources that are responsible for query execution and are automatically provisioned as needed by the Control Plane.

1.16.   "**Fees**" has the meaning set forth in Section 6.1.

1.17.   "**Intellectual Property Rights**" means all worldwide intellectual property rights available under applicable laws, including, without limitation, rights with respect to patents, copyrights, moral rights, trademarks, trade secrets, know-how and databases.

1.18.   "**Order**" means an order form entered into by Customer and Dremio (or its authorized reseller), or an online order placed by Customer through the set up of Dremio Cloud (either directly with Dremio or the relevant marketplace), for the provision of Dremio Cloud to Customer and/or provision of Support Services or Professional Services to Customer.

1.19.   "**Previews**" has the meaning set forth in Section 3.5.

1.20.   "**Professional Services**" means any consulting, implementation, training, integration or other professional services regarding Dremio Cloud, as may be offered by Dremio from time to time, that are provided to Customer pursuant to an Order.

1.21.   "**Support Services**" means the technical support services offered by Dremio, as set forth in Dremio's Cloud Support Policy.

1.22.   "**System**" means any application, operating systems, computing or storage device, or network.

1.23.   "**Term**" has the meaning set forth in Section 5.1.

1.24.   "**Third Party Service**" has the meaning set forth in Section 3.11.

1.25.   "**Updates**" has the meaning set forth in Section 4.2.

2. SCOPE

2.1.   **General**. This Agreement serves as the framework under which Customer may use Dremio Cloud, whether by subscribing to the post-pay, generally available version of Dremio Cloud ("**Pay-As-You-Go**" or "**PAYG**"), or the free version of Dremio Cloud, or entering into Orders with Dremio or its authorized resellers.

2.2.   **Conflict**. To the extent a conflict arises between the terms of an Order and the terms of this Agreement, the terms of this Agreement will govern, except to the extent, if any, otherwise expressly set forth in the Order. By entering into this Agreement (including each Order hereunder), Customer waives all terms and conditions contained in its purchase orders, order acknowledgement forms, invoices or other documents that are different from or additional to the terms and conditions set forth in this Agreement (including each Order hereunder), and all such different or additional terms and conditions will have no legal effect between the parties.

2.3.   **Customer Affiliates**. Subject in each case to Dremio's approval, the benefits and the rights granted to Customer under this Agreement may be extended by Customer to its Affiliates; provided that Customer and each Affiliate will be jointly and severally responsible and liable for the actions and omissions of the Affiliate (including, without limitation, any payment obligation). Without limiting the foregoing, Dremio reserves the right to refuse to execute an Order with any Affiliate of Customer, in Dremio's reasonable discretion, including based on the Affiliate's creditworthiness or financial capabilities.

3. **USE OF DREMIO CLOUD**

3.1.   **Account Set-Up; Authorized Users**. To access and use Dremio Cloud, Customer must sign up for an account and provide Dremio with the information requested in the registration process. Dremio may also allow Customer to create its Dremio Cloud account and log into the account using Customer's account credentials of a third-party service (*e.g.*, Google, GitHub, *etc.*) and/or to authenticate through an identity provider (IdP). By connecting to Dremio Cloud with a third-party service, Customer may be required to provide Dremio with Customer's log-in credentials for such third-party service, and Customer gives Dremio permission to access and use Customer's information from that service as permitted by that service, and to store Customer's log-in credentials for that service, in accordance with Dremio's Privacy Policy (published at dremio.com/legal/privacy). Customer may be asked to provide certain credentials for each individual Authorized User. Customer is solely responsible for providing accurate, complete and updated registration information and for maintaining the confidentiality of its (and its Authorized Users') account access credentials.

3.2.   **Grant of Rights**. Subject to Customer's compliance with the terms and conditions of this Agreement, including, without limitation, the timely payment of all Fees set forth in the applicable Order, Dremio grants to Customer, during the Term, a limited, non-exclusive, non-transferable right to permit its Authorized Users to access and use Dremio Cloud, in accordance with the Documentation, the Acceptable Use Policy and any applicable law, and solely for Customer's internal business purposes.

3.3.   **Deployment**. Customer acknowledges that Dremio Cloud is implemented in a manner that divides the platform between its two main components—the Control Plane that resides in a Dremio Cloud Environment and the Execution Plane that resides in the Customer Cloud Environment (except in certain offerings of Dremio Cloud where the Execution Plane may reside in Dremio's environment), and that accordingly each party must undertake certain technical and organizational measures in order to protect the security of Dremio Cloud and Customer Content. Without limiting the foregoing, Customer acknowledges and agrees that (a) in order to utilize Dremio Cloud, Customer must have an account with the Cloud Service Provider; (b) Dremio does not host the Customer Cloud Environment into which certain parts of Dremio Cloud are deployed or the Systems in which Customer Data may be stored (*e.g.*, an AWS S3 bucket or other cloud storage by Cloud Service Providers); (c) while certain Customer Data may occasionally be present within Dremio Cloud (*e.g.*, within the Customer Results), Dremio Cloud is not designed to archive or permanently retain Customer Data, but merely to provide an environment to facilitate Customer's queries and other data management services in relation to Customer Data within the Customer Cloud Environment; and (d) Dremio Cloud does not provide backup services or disaster recovery to enable recovery of Customer Data. Accordingly, and without limiting the foregoing, Dremio is not responsible for any loss, destruction, alteration, or corruption of Customer Content.

3.4.   **Shared Responsibility**.

(a)   <u>Customer Responsibility</u>. Customer acknowledges and agrees that Customer is responsible for: (i) protecting the security of all Customer credentials used to access Dremio Cloud; (ii) securing the Customer Cloud Environment and any Customer-controlled System (with such steps to include, without limitation, industry standard steps to preclude unauthorized access); (iii) backing up and securing Customer Data under Customer's control within the Customer Cloud Environment or other Customer-controlled Systems and (iv) managing and paying the charges associated with Customer's usage of the Customer Cloud Environment (*e.g.*, compute,storage and network fees); and Customer expressly assumes the risks associated with the foregoing responsibilities set forth in this paragraph.

(b)   <u>Dremio Responsibilities</u>. Dremio acknowledges and agrees that, except to the extent caused by the action or intentional or negligent inaction of Customer or its Authorized Users, including, without limitation, any customizations or configurations of Dremio Cloud by Customer or anything specified to be Customer's responsibility above, Dremio is responsible for: (i) the operation of the Dremio Cloud Environment (including the user interface of Dremio Cloud and the portion of Dremio Cloud within the Control Plane) and the Dremio software that operates the computing resources in the Execution Plane; and

(ii) implementing reasonable technical and organizational measures designed in accordance with SOC2 Type II or equivalent/greater standard to protect the security of the foregoing.

3.5. **Beta Services**. Dremio may, in its sole discretion, offer preview, beta or pre-release features or services, prior to their general commercial release ("**Previews**"), for the purpose of evaluating performance, identifying defects and obtaining feedback. Previews will be designated as 'preview,' 'pre-release,' 'experimental,' 'beta' or with a similar legend. Customer may access and use Previews solely for internal evaluation purposes. Previews are excluded from Dremio's support and service level obligations unless expressly stated otherwise by Dremio. Dremio may change or discontinue Previews at any time without notice and has no obligation to release a final version of any Preview. Non-public information about a Preview is deemed to be the Confidential Information of Dremio. Any access or use of Previews by Customer will be at Customer's sole discretion and risk. Dremio will not be liable for any damages in connection with Customer's use of any Previews. PREVIEWS ARE MADE AVAILABLE ON AN AS-IS BASIS, WITHOUT WARRANTY OF ANY KIND.

3.6. **Restrictions**. Customer shall not, and shall not cause or allow any Authorized User or third party to: (a) decompile, disassemble or reverse-engineer any part of Dremio Cloud, or otherwise attempt to derive the source code, algorithms or technology included in Dremio Cloud; (b) remove or alter any copyright, trademark, logo or any other product identification or proprietary rights notices included in Dremio Cloud or any Documentation, or fail to preserve all copyright and other proprietary notices in all copies of the Documentation made by Customer; (c) license, sublicense, sell, resell, lease, lend, use for timesharing or service bureau purposes, any part of Dremio Cloud, except to the extent expressly permitted in this Agreement or as expressly authorized by Dremio; (d) copy, modify, adapt, tamper with, frame, or create derivative works of, Dremio Cloud or the Documentation; or (e) access or use Dremio Cloud as part of any effort to develop software or service having any functional attributes, visual expressions or other features similar to those of Dremio Cloud or otherwise in order to build a competitive product or service; (f) except with Dremio's prior written permission, publish any performance or benchmark tests or analysis relating to Dremio Cloud; (g) attempt to circumvent, disable or otherwise interfere with security-related or access-related features of Dremio Cloud; (h) represent that it possess any proprietary interest in Dremio Cloud; or (i) directly or indirectly, take any action to contest Dremio's Intellectual Property Rights in Dremio Cloud or infringe them in any way.

3.7. **Customer Systems**. Customer will be responsible for obtaining and maintaining all Systems and any other equipment and ancillary services needed to connect to, access or otherwise use Dremio Cloud. Dremio will not be liable for any Systems and/or ancillary services needed to connect to, access or otherwise use Dremio Cloud.

3.8. **Compliance**. Customer will be solely responsible for ensuring that its use of Dremio Cloud, including, without limitation, Customer's provision of Customer Data through Dremio Cloud complies with all applicable laws (including, all privacy law), rules, and regulations. Further, Customer is solely responsible for all activity occurring in and through Dremio Cloud by Customer and its Authorized Users and for each of the Authorized User's compliance with all terms and conditions of this Agreement. At Dremio's written request, Customer will furnish Dremio with a certification signed by an officer of Customer verifying that Dremio Cloud is being used in accordance with the terms of this Agreement and the applicable Orders. In the event Dremio believes that Customer is in violation of any of the obligations or restrictions set forth in this Section 3, Dremio may immediately suspend Customer's access to Dremio Cloud and Customer will not be entitled to any refund of any fees due to such suspension.

3.9. **Changes to Dremio Cloud**. Dremio may, from time to time, at its sole discretion, update and/or change any part of Dremio Cloud, including its features, functions, layout and design. Dremio will provide Customer with reasonable prior notice (including by email) of any material changes to Dremio Cloud. In the event that such changes to Dremio Cloud remove (without a substitute) or otherwise materially adversely affect any of the material features or functionality of Dremio Cloud, then Customer may notify Dremio in writing that it intends to terminate its Dremio Cloud account, provided that such notice is given to Dremio within thirty (30) days after Customer receives notice of such changes. If upon receiving Customer's notice Dremio fails to remove such adverse changes and restore the applicable features and

functionality to Dremio Cloud within thirty (30) days of receiving Customer's notice then Customer may as its sole remedy, terminate this Agreement for convenience upon written notice to Dremio (in which case Customer will be entitled to receive a refund of any prepaid, unused fees remaining as of the date the changes were implemented).

3.10. **Dremio Cloud Free Version**. If Customer uses the free version of Dremio Cloud, Customer acknowledges and agrees that Dremio may, at any time and in its sole discretion, upon written notice, (a) remove or change any part of the free version of Dremio Cloud, including its features, functions, layout and design, (b) begin to charge for the use of any part of the free version of Dremio Cloud, including any of its features or functions, and (c) cease offering or making available the free version of Dremio Cloud.

3.11. **Dremio-Supported Third Party Services**. Customer acknowledges and agrees that Dremio Cloud may operate with or using other services or application programming interfaces (APIs) operated or provided by third parties. Further, as a data infrastructure processing tool, Dremio Cloud may allow customers to add or use third party services in connection with or on top of Dremio Cloud. Customer acknowledges and agrees that Dremio will have no liability for any software or service powered by or supported by Dremio Cloud that is provided under contract with a third party ("**Third Party Service**"). Dremio does not make any representations or warranties with respect to any such Third Party Service or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions. For the avoidance of doubt, this Agreement does not provide for or govern the acquisition or use of any Third Party Service and does not amend any term of the third party provider's contract for the Third Party Service.

4.**SUPPORT; PROFESSIONAL SERVICES**

4.1. **Support and Professional Services**. To the extent included with the applicable Order or if Customer otherwise purchases support services for Dremio Cloud, Dremio will provide maintenance and support services pursuant to its then-current support policy, currently available at https://www.dremio.com/support-policy/ ("**Cloud Support Policy**"). If applicable, Dremio will provide to Customer any training or deployment and implementation assistance or other Professional Services as specified in the applicable Order. Customer acknowledges that the successful and timely provision of the Support Services and Professional Services requires the Customer's compliance and adherence to the requirements included in this Agreement, the Documentation, or applicable Order, as well as its good faith cooperation, including by making available such personnel and information as may be reasonably requested by Dremio. Dremio will not be liable for any failure to provide the Support Services or Professional Services that arises from Customer's failure to cooperate with Dremio as set forth above. Customer acknowledges and agrees that the service levels included in the Cloud Support Policy are performance targets only and any failure of Dremio to meet any service level will not result in any breach of this Agreement or any payment or liability of Dremio to Customer.

4.2. **Updates**. Customer acknowledges that Dremio may, from time to time, develop and implement into Dremio Cloud error corrections, bug fixes, enhancements, upgrades, updates, improvements, modifications, extensions and other changes ("**Updates**"). Updates implemented into the Dremio Cloud will be deemed part of Dremio Cloud.

5.**TERM AND TERMINATION**

5.1. **Term of Agreement**. This Agreement will come into force on the Effective Date and will remain in effect until Customer terminates its Dremio Cloud account or until Dremio provides thirty (30) days' advance written notice of termination (or in cases where the Order stipulates a fixed subscription term, until expiration of such term) (the "**Term**").

5.2. **Termination for Cause**. Each party will have the right to terminate this Agreement if: (i) the other party has materially breached any term of this Agreement and fails to cure such breach within thirty

(30) days following written notice thereof from the non-breaching party (or immediately if the breach is not capable of being cured); or (ii) the other party is adjudicated bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party, or becomes the subject of any petition in bankruptcy or any other proceedings relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that are not dismissed within thirty (30) days. Any failure to pay Fees due under this Agreement or an applicable Order (except to the extent disputed in good faith) will be deemed a material breach by Customer of this Agreement.

5.3.   **Effect of Termination**. Upon termination or expiration of this Agreement, Customer shall immediately cease to access and use Dremio Cloud. If the Agreement is terminated due to Dremio's material breach, Dremio will refund to Customer that portion of any prepaid and unused Fees.

5.4.   **Survival**. All sections of this Agreement which by their nature should survive termination will survive termination or expiration of this Agreement for any reason whatsoever, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, limitations of liability and indemnification.

6. CONSIDERATION AND TAXES

6.1.   **Fees**. In consideration for the right to use Dremio Cloud, the Support Services and Professional Services, as applicable, Customer will pay Dremio (or its authorized reseller) the following fees (collectively, the "**Fees**"): (i) for pre-paid DCU Credit, the amounts specified in the applicable Order, and (ii) for excess consumption or Pay-As-You-Go, the fees set forth in the fee schedule at [https://www.dremio.com/pricing] (unless otherwise set forth in an applicable Order). All Fees are nonrefundable, except as otherwise provided in this Agreement or the applicable Order.

6.2.   **Dremio Consumption Units (DCUs)**. Customer will receive a credit for usage of Dremio Cloud (DCU Credit) equal to the Fees paid by Customer. Dremio DCU pricing schedule is available at https://www.dremio.com/dcus Consumption of the DCU Credit will be measured in units of processing capability per hour (or the most granular counting unit available), known as "**Dremio Consumption Units**" or "**DCUs**." The total DCU consumption by Customer is the sum of the DCU consumption of all Instances. Unless otherwise set forth in the Order, any unused DCU Credit paid for under the Order will expire twelve (12) months from the date of purchase. If all DCU Credit corresponding to the Fees set forth in the Order is consumed by Customer prior to Customer's purchase of additional DCU Credit, any additional usage of Dremio Cloud will be charged, and Customer shall pay, the on-demand price set forth on https://www.dremio.com/pricing or the applicable on-demand price schedule of the respective Cloud Service Provider's marketplace, unless Customer purchases additional DCU Credit in advance from Dremio. Dremio and the Cloud Service Provider may track Customer's usage of Dremio Cloud and consumption of DCU Credit. Customer's consumption of DCUs (or DCU balance) will be available to Customer through its Dremio Cloud account.

6.3.   **Billing**. Unless otherwise set forth in the applicable Order, (a) all Fees owed to Dremio will be paid in US Dollars; (b) Fees for pre-paid DCU Credit will be invoiced in full upon execution of the applicable Order, and will be due and payable within 30 days after the applicable invoice date unless otherwise set forth in the Order; (c) all excess consumption or Pay-As-You-Go consumption will be billed at the on-demand price set forth on https://www.dremio.com/pricing or the applicable on-demand price schedule of the respective Cloud Service Provider's marketplace, in arrears as determined by Dremio (or the respective Cloud Service Provider), though not more than monthly; and (d) any Fees due for Support Services and Professional Services will be invoiced monthly in advance.

6.4.   **Taxes**. The Fees payable under this Agreement as stated in Orders are net amounts, exclusive of any sales, value added and other similar taxes. Customer shall exclusively bear all national, state, or local excise, sales, use, withholding, value-added, or other taxes or duties (except for taxes based on Dremio's net income) arising out of this Agreement or use of Dremio Cloud, Support Services or Professional Services.

6.5. **Fee Updates**. Dremio reserves the right to change the Fees or applicable charges and to institute new charges and Fees, upon ninety (90) days prior notice to Customer (which may be sent by email) or in accordance with the applicable marketplace rules of the Cloud Service Provider.

6.6. **Non-Payment and Suspension**. If Customer does not timely pay an invoice for DCU Credit, Dremio reserves the right to charge Customer the PAYG price for the DCUs consumed by Customer until such time Customer pays the invoice in full. Further, in addition to any other rights granted to Dremio under this Agreement, Dremio reserves the right to suspend or terminate this Agreement, any related Orders, and Customer's access to Dremio Cloud, with prior written notice to Customer, if Customer does not provide payment on time and such failure remains uncured for a period of thirty (30) days. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, from the date due, plus all expenses of collection. Customer will continue to be charged for Fees during any period of suspension due to Customer's delinquency.

6.7. **Payment Disputes**. If Customer believes that Dremio has billed Customer incorrectly, Customer must contact Dremio no later than thirty (30) days after receipt of the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit (should Dremio determine that Customer was in fact billed incorrectly).

7. PROPRIETARY RIGHTS

7.1. **Dremio Cloud**. Dremio owns and will retain all right, title and interest, including all Intellectual Property Rights in and to: (a) Dremio Cloud, including all underlying software, algorithms, inventions and technology; and (b) the Documentation, including any revisions, corrections, modifications, translations, enhancements and updates thereof. Customer acknowledges and agrees that Dremio Cloud is provided on a non-exclusive basis and that no transfer of ownership of any Intellectual Property Rights will occur. Customer further acknowledges and agrees that certain parts of Dremio Cloud, including, without limitation, the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets and other Intellectual Property Rights of Dremio and its licensors.

7.2. **Customer Data**. As between Customer and Dremio, Customer owns and will retain all right, title and interest in and to the Customer Data. Customer hereby grants to Dremio a worldwide, non-exclusive, royalty-free, fully paid-up license, during the Term, to access, reproduce, store and process Customer Data in any manner reasonably necessary to operate Dremio Cloud or to perform Support Services or Professional Services for Customer.

7.3. **Feedback**. If Customer provides to Dremio any suggestions, ideas, enhancement requests, recommendations or other feedback relating to Dremio Cloud or other Dremio offerings ("**Feedback**"), then Customer agrees that Dremio will be free to use and incorporate any such Feedback without any restrictions and without any obligation or compensation to Customer. Customer also irrevocably waives any moral rights which Customer may have in any Feedback pursuant to applicable copyright law.

7.4. **Usage Data**. Customer agrees that Dremio will have the right to collect and analyze usage, telemetry and other data relating to the provision, use and performance of various aspects of Dremio Cloud (including, without limitation, information concerning queries entered by Authorized Users; but excluding, for the avoidance of doubt Customer Content) ("**Usage Data**"), and that Dremio will be free (during and after the Term hereof) to use Usage Data to improve and enhance Dremio Cloud and for other development, diagnostic and corrective purposes in connection with Dremio Cloud and other Dremio offerings. Dremio will not share (other than with third parties providing services to Dremio who agree in writing to terms at least as restrictive regarding the use of Usage Data as those set forth herein) or publicly make available any Usage Data that identifies Customer or any of its Authorized Users, nor use any Usage Data in a manner that derives its value from the unique aspects of Customer's queries.

7.5. **No Implied Rights**. No rights or licenses are granted by Dremio to Customer under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth in this Agreement.

7.6.   **Open Source Components**. Dremio Cloud may contain certain third party open source software components. Customer acknowledges that these open source components are provided pursuant to various open source licenses (as may be identified to Customer by Dremio from time to time or in the Documentation or the applicable proprietary notices). Copyrights to the open source software are held by the copyright holders indicated in the Documentation or the applicable notices. Any fees charged by Dremio in connection with Dremio Cloud do not apply to any open source components for which fees may not be charged under their applicable open source licenses. With respect to each Open Source Component, (a) to the extent there are any conflicts between any terms of this Agreement and any terms of the respective open source license, which the open source license does not permit, such conflicting terms of this Agreement will not apply; and (b) to the extent the terms of the respective open source license entitle the Customer to receive a copy of the source code of such open source components, that source code may be available from Dremio upon Customer's request.

8.**CONFIDENTIALITY; DATA PROTECTION**

8.1.   **Confidential Information**. "**Confidential Information**" means any business or technical information disclosed by either party ("**Discloser**") to the other party ("**Recipient**") that is designated as confidential at the time of disclosure or that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Without limiting the foregoing, all non-public elements or non-public information regarding features, functionality and performance of Dremio Cloud, as well as the terms of this Agreement and any Order, are considered to be Dremio's Confidential Information. Any information that either party derives relating to the conduct or performance of the other party's personnel, services or systems, or the other party's data security measures, incidents or findings constitute Confidential Information of such other party.

8.2.   **Confidentiality Obligations**. Recipient will: (a) hold in strict confidence all Confidential Information of Discloser, and to use at least the same degree of care to protect the Confidential Information as it uses to protect its own confidential information of like importance (and in no event with less than reasonable care); (b) not use Confidential Information of Discloser except as necessary to perform or use the Services or as otherwise permitted in this Agreement; and (c) not disclose any Confidential Information to any third-party without the prior written consent of Discloser, other than to those employees or service providers of Recipient who have a need-to-know such information for purposes of this Agreement. Recipient's obligations hereunder with respect to each item of Confidential Information will expire five (5) years from the date of receipt by Recipient or such longer period if trade secret protection applies (for so long as the Confidential Information constitutes a trade secret).

8.3.   **Exceptions**. The confidentiality obligations hereunder shall not apply to any information that Recipient can document (a) is already or becomes in the public domain through no fault of Recipient or a breach of this Agreement; (b) was, as between the Parties to this Agreement, lawfully in Recipient's possession prior to receipt from Discloser, as evidenced by the Receiving Party's contemporaneous written records,; (c) is received by Recipient independently from a third party free to lawfully disclose such information to Recipient, as evidenced by the Receiving Party's contemporaneous written records; or (d) is independently developed by Recipient without use of or reference to Confidential Information; (e) is required to be disclosed by law or by the order of a court or by an administrative body, provided however that to the extent legally permissible, the Recipient notifies the Discloser of such required disclosure promptly and in writing and cooperates with the Discloser, at the Discloser's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

8.4.   **Return of Confidential Information**. Recipient further agrees to return to Discloser or destroy, at Disclosers choice, all Confidential Information (and any tangible materials incorporating Confidential Information) upon the termination of this Agreement or at any time upon Discloser's written request. However, Recipient may retain one copy of the Confidential Information in order to comply with mandatorily applicable law and to observe its obligations under this Agreement. Additionally, the Recipient's backups of computer records maintained as part of the Recipient's reasonable IT policy shall not be required

to be deleted provided that in all cases involving such retention or non-destruction of Confidential Information, such records or copies shall be subject to the confidentiality obligations herein for as long as they are retained.

8.5. **Equitable Relief**. Recipient acknowledges and recognizes that Discloser would suffer irreparable harm if Recipient violates its confidentiality obligations under this Agreement and that damages may not be a suitable remedy for such a violation. Accordingly, in addition to all other remedies to which Discloser may be entitled, it may also seek injunctive relief and any other form of equitable relief in any applicable jurisdiction.

8.6. **Privacy and Data Protection**. The parties will comply with Dremio's applicable Data Processing Agreement (DPA) available at https://www.dremio.com/legal which is incorporated into this Agreement.

8.7. **Data Security**. Each party has obligations with respect to the security of Dremio Cloud and Customer Content. Dremio will implement and maintain appropriate technical and organizational security measures. The current technical and organizational security measures are described at https://dremio.com/platform/security. Customer is responsible for properly configuring and using Dremio Cloud and taking its own steps to maintain appropriate security, protection and backup of Customer Content. Customer will not disclose its user credentials to any unauthorized persons. Customer is responsible for all activities in Customer's account, regardless of whether undertaken by Customer, Authorized Users or a third party. Dremio is not responsible for unauthorized access to Customer's account unless caused by Dremio's breach of this Agreement. Customer must contact us immediately if it believes unauthorized activity has occurred in Customer's account or if Customer's account information is lost or stolen.

9. **WARRANTIES AND DISCLAIMER**

9.1. **By Customer**. Customer represents, warrants and covenants that (a) the person entering into this Agreement on behalf of Customer has the legal authority to bind Customer; (b) Customer owns all right, title and interest in and to the Customer Data and/or has a license (and any applicable consents required by law or contract) granting Customer the rights and authority necessary to use and process Customer Data with Dremio Cloud in accordance with this Agreement and otherwise to grant to Dremio the rights contemplated by this Agreement; and (c) none of the Customer Data violates this Agreement, any applicable law or any third party's intellectual property or other right.

9.2. **By Dremio**. Dremio represents, warrants and covenants that, during the Term, (a) Dremio Cloud will function substantially in accordance with the Documentation; and (b) it will employ commercially reasonable efforts in accordance with industry standards to prevent the transmission of malware or malicious code via Dremio Cloud (not caused by Customer or its Authorized Users). Dremio's sole liability and Customer's exclusive remedy for any breach of this warranty will be to use reasonable commercial efforts to remedy any such non-conformance in accordance with the Cloud Support Policy, and, if Dremio is unable to substantially correct the deficiency in a commercially reasonable manner, Dremio will end the deficient services and refund to Customer the portion of any prepaid and unused Fees applicable to such deficient services. Dremio further warrants that it will perform the Support Services and Professional Services in a professional and workmanlike manner. The foregoing warranty will not apply if the non-conformance was caused by (i) use of Dremio Cloud other than in accordance with this Agreement, (ii) modifications to Dremio Cloud by Customer or any third-party, or (iii) Customer's Systems or third-parties' Systems or services used in connection with Dremio Cloud.

9.3. **Disclaimer**. DREMIO DOES NOT MAKE ANY WARRANTY THAT DREMIO CLOUD WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED OR THAT IT WILL MEET THE CUSTOMER'S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF DREMIO CLOUD. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, DREMIO CLOUD IS PROVIDED "AS IS" AND DREMIO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NON-INFRINGEMENT.

10. **INDEMNIFICATION**

10.1. **Indemnification by Dremio**. If a third party makes a claim against Customer that Dremio Cloud as made available by Dremio to Customer or Customer's use of Dremio Cloud infringes or misappropriates such third party's Intellectual Property Rights ("**IP Claim**"), Dremio will (a) defend Customer against the IP Claim at Dremio's cost and expense, and (b) indemnify Customer for all damages, costs and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Dremio arising out of such IP Claim. Notwithstanding the foregoing, Dremio will have no liability for any IP Claim based on (i) the use of Dremio Cloud other than in accordance with the Documentation and this Agreement, (ii) the combination, operation or use of Dremio Cloud with Systems, software or data (including, without limitation, Customer Data) not supplied by Dremio, if a claim would not have occurred but for such combination, operation or use; or (iii) the public open source version of Apache Arrow, if the claim does not allege with specificity that the infringement or misappropriation arises from Dremio Cloud (as opposed to Apache Arrow itself).

10.2. **Indemnification by Customer**. Customer will (a) defend Dremio and its affiliates, and its and their officers, directors and employees, from any third party claim, demand, suit or proceeding based upon or resulting from: (i) use of Dremio Cloud in violation of any applicable laws or this Agreement and/or violation of third party rights; (ii) the submission, processing, display and/or use of any Customer Data, including, without limitation, any claim that any Customer Content infringes or misappropriates such third party's Intellectual Property Rights; and (b) pay all damages, expenses and costs (including, reasonable attorneys' fees) awarded against Dremio by a court of competent jurisdiction or agreed to in a written settlement agreement entered into by Customer.

10.3. **Process**. Each party's obligation to indemnify the other party is conditioned on the party seeking indemnification: (a) promptly notifying the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, (b) allowing the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim that requires the indemnified party to admit fault without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed), and (c) giving the indemnifying party reasonable assistance in the defense and settlement of any claim, suit or proceeding for which indemnity is claimed. The indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in the defense of the claim and any appeal arising therefrom.

10.4. **Mitigation**. If Customer's use of Dremio Cloud (or any part thereof) is, or in Dremio's opinion is likely to be, enjoined as a result of infringement or misappropriation of any third party Intellectual Property Right, Dremio will, at Dremio's option and expense, and at no cost or expense to Customer, either: (a) procure for Customer the right to continue to use Dremio Cloud under the terms of this Agreement; or (b) replace or modify the infringing portion of Dremio Cloud so that it becomes non-infringing and substantially equivalent in function, or (c) if neither of the foregoing is commercially practicable in Dremio's judgment, terminate this Agreement and provide Customer a refund of any fees prepaid to Dremio and not used. This Section 10 states Dremio's sole liability, and Customer's exclusive remedy, with respect to any claim of infringement or misappropriation of Intellectual Property Infringement.

11. **LIMITATION OF LIABILITY**

IN NO EVENT WILL NEITHER PARTY, OR ITS OFFICERS, EMPLOYEES, AGENTS OR LICENSORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR REVENUES, LOSS OF DATA, OR LOSS ARISING FROM INACCURATE OF UNEXPECTED RESULTS ARISING FROM THE USE OF DREMIO CLOUD, WHETHER IN AN ACTION IN CONTRACT OR TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OTHER THAN AS SET FORTH BELOW, DREMIO'S AGGREGATE LIABILITY RELATED TO THIS AGREEMENT, INCLUDING, FOR AVOIDANCE OF DOUBT, AS RELATED TO DREMIO CLOUD, SUPPORT SERVICES AND PROFESSIONAL SERVICES, WHETHER IN AN ACTION IN

CONTRACT, TORT OR OTHERWISE, AND WHETHER TO CUSTOMER OR OTHERWISE (INCLUDING, WITHOUT DEROGATING FROM THE GENERALITY OF THE FOREGOING, TO THE CUSTOMER'S OFFICERS, EMPLOYEES, AUTHORIZED USERS AND SHAREHOLDERS) WILL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID TO DREMIO BY CUSTOMER UNDER THE APPLICABLE ORDER IN THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY ("GENERAL CAP"). NOTWITHSTANDING THE FOREGOING, DREMIO'S AGGREGATE LIABILITY FOR ANY CLAIM PURSUANT TO SECTION 10 SHALL BE LIMITED TO TWO (2) TIMES THE GENERAL CAP. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE AND EVEN IF THE DREMIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. MISCELLANEOUS

12.1. **Subcontracting**. The subcontracting by Dremio of any of its obligations under this Agreement to any Affiliate or subcontractor will not relieve Dremio from any obligation or liability under this Agreement, and Dremio will remain liable for all acts and omissions of any such Affiliate or subcontractor.

12.2. **Assignment**. Customer may not assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of Dremio. This Agreement will be binding upon and inure to the successors and permitted assigns of both parties.

12.3. **Governing Law; Venue**. This Agreement and all matters arising out of or relating to this Agreement will be governed by the laws of the State of California, excluding conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The federal or state courts located in Santa Clara County, California, will have exclusive jurisdiction to hear any dispute under this Agreement and both parties hereby consent to exclusive personal jurisdiction in such courts.

12.4. **Publicity**. Dremio may use Customer's name and logo in its customer lists which may be posted on Dremio's website or other marketing materials, provided that such postings will at all times comply with any trademark usage guidelines provided by Customer to Dremio. However, if Customer is a paying customer (i.e., not a user of the free version of Dremio Cloud), Customer may request by written notice to Dremio (to legal@dremio.com) that Dremio remove Customer's name and/or logo from Dremio's website or marketing materials, and Dremio will promptly do so. Except as set forth above, neither party may use the name or logo of the other party in any media release, public announcement or similar disclosure unless such use was approved in writing (including via e-mail) by the other party prior thereto.

12.5. **Force Majeure**. Except for the obligation to make all payments due under this Agreement on a timely basis, neither party will be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, without limitation, Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections or any other cause beyond the reasonable control of the party whose performance is affected.

12.6. **Export Controls**. Customer agrees to comply fully with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, "**Export Controls**"). Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, transfer or make available any part of Dremio Cloud or access to Dremio Cloud or any direct product thereof to any destination, company or person restricted or prohibited by Export Controls.

12.7. **Entire Agreement; Severability**. This Agreement, together with the attached exhibits that are incorporated by reference, constitutes the entire agreement of the parties and supersedes all prior or contemporaneous communications, advertisements, marketing materials, understandings and agreements relating to the subject matter hereof, whether oral or written, except in the event the parties have signed a master agreement that governs the subject matter hereof. If any provision or provisions of this Agreement ia held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining

provisions will not in any way be affected or impaired by such holding and the parties shall negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

12.8. **Amendment; Waiver of Contractual Right**. No modification or claimed waiver of any provision of this Agreement will be valid except by written amendment manually signed by authorized representatives of Dremio and Customer. Waiver of any provision under this Agreement will not be deemed a future waiver of that or any other provision herein, nor will waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

12.9. **Notices**. All notices given pursuant to this Agreement must be in writing and will be deemed to have been duly given when: hand delivered, sent by email (with written confirmation of receipt), or when received by the addressee (with written confirmation of receipt) in each case to the appropriate address set forth below or in the applicable Order (or to such other address or e-mail address as a party may designate by notice from time to time): If to Dremio, to: Dremio Corporation, 3970 Freedom Circle #110, Santa Clara, CA 95054 USA, Attention: Legal Department, email: legal@dremio.com; if to Customer, to the address provided by Customer to Dremio in the process of setting up Customer's account.

12.10. **Relationship between the Parties**. Dremio is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

12.11. **Counterparts**. If this Agreement is not accepted online but rather signed by the parties, it may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.