InfluxDB Cloud 2.0: Services Subscription Agreement

Last Revised: July 22, 2019

This InfluxDB Cloud 2.0 Services Subscription Agreement are the terms of service (the "**Agreement**") under which InfluxData agrees to grant Customer access to and use of InfluxData's online InfluxDB Cloud 2.0 service offerings. By indicating Customer's acceptance of this Agreement, executing a Sales Order that references this Agreement, or using InfluxData's services, Customer agrees to be bound by this Agreement. If you are entering into this Agreement on behalf of an entity, such as the company you work for, then you represent to InfluxData that you have the legal authority to bind the Customer to this Agreement.

Section 1: Definitions

For the purposes of this Agreement, the following initially capitalized words are ascribed the following meanings:

"**Acceptable Use Policy**" means the then-current InfluxData policy located at https://www.influxdata.com/legal, and incorporated into this Agreement by reference, and as may be updated by InfluxData from time to time.

"**Channel Partner**" means an entity that InfluxData has authorized as a "distributor" or "reseller" of Services.

"**Channel Partner Sale Agreement**" means the order, agreement or other document between Customer and a Channel Partner for Customer's purchase

of Services. Terms that apply to Customer's use of the Services when purchased from a Channel Partner are specified in Section 13.

"**Confidential Information**" has the meaning ascribed to it in Section 6.1.

"**Customer**" means the entity identified as such in the applicable Sales Order.

"**Customer Data**" means any data or other information which is provided by (or on behalf of) Customer directly or indirectly to InfluxData in connection with the Services.

"**Customer Materials**" means any software, documentation, Customer Data (including Personal Data), hardware, tools, trademarks, service marks or brands, or any other materials, information or intellectual property owned, leased, licensed or used by Customer, and that Customer delivers to InfluxData or to which Customer provides InfluxData with access, or that Customer requires InfluxData to use for purposes of the Services.

"**Documentation**" means the software user and administrator manuals provided to Customer by InfluxData regarding use of the Services, including additional, updated or revised documentation, if any.

"**InfluxData Methodology**" means InfluxData's processes, methods, techniques and know-how, relating to the Services and Support Program.

"**InfluxData Software**" means the InfluxData computer software applications, tools and other programs.

"**Intellectual Property Rights**" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

"**Personal Data**" means information relating to an identified or identifiable natural person that is required to be protected by applicable law.

"**Sales Order**" means one or more mutually agreed, written sales order, executed on behalf of InfluxData and Customer (including its exhibits and addenda), describing the Services, Support Program, fees, and any special terms for using the Services that Customer has ordered. If Customer subscribes via InfluxData's online checkout, then the checkout form submitted by Customer and accepted by InfluxData constitutes the applicable Sales Order for purposes of this Agreement. Each Sales Order becomes effective on its Sales Order Effective Date and is made part of this Agreement.

"**Sales Order Effective Date**" means, with respect to each Sales Order: (i) the effective date specified in the Sale Order or, if none, then the date on which the last of InfluxData and Customer executes the Sales Order, (ii) in the case of an online checkout form, the date on which InfluxData enters the completed online checkout form into its system, or (iii) if Customer purchases Services through a Channel Partner, upon InfluxData's acceptance of the Sales Order following its submission by the Channel Partner.

"**Services**" means the Site, the InfluxData Software and its Documentation, together with other computer software programs, Support Program, networks and equipment that InfluxData uses to make the foregoing available to its customers as an online service offering to which Customer subscribes, as specified in the applicable Sales Order.

"**Site**" means a location designated by InfluxData which may include a subpage within InfluxData's website (www.influxdata.com) or other location or method of providing access to Customer to the Services.

"**Subscription Term**" has the meaning ascribed to it in Section 4.

"**Support Program**" means the technical support and maintenance provided by InfluxData as part of the Services and specified in InfluxData's then-current Support Policy, published at **https://www.influxdata.com/legal**, and incorporated into this Agreement by reference, and as may be updated by InfluxData from time to time.

"**Term**" means the Initial Term and any Renewal Terms, as more fully described in Section 4.

"**Third Party Service Provider**" means a third party that provides services to Customer, and that has agreed in writing with Customer to requirements to protect Intellectual Property Rights and Confidential Information of Customer, its suppliers and licensors that are substantially no less protective of Intellectual Property Rights and Confidential Information than those contained in this Agreement.

"**User**" means any individual who is an employee or independent contractor of Customer or, to the extent providing services to Customer, is an employee of a Third Party Service Provider, and who is authorized by Customer to use the Services.

The following words will be interpreted as designated: (i) "or" connotes any combination of all or any of the items listed; (ii) where "including" is used to refer to an example or begins a list of items, such example or items will not be exclusive; (iii) "specified" requires that an express statement is contained in the relevant document; and (iv) "will" is, unless the context requires otherwise, an

expression of command, not merely an expression of future intent or expectation.

Section 2. Provision and Use of Services

2.1 Provision of Services. Customer may access and use the Services in accordance with this Agreement. Access to the Services is available through the Internet over an https connection, via a password-protected computer interface or access code.

2.2 Customer's Account. Customer will designate one of its employees to be the point of contact with InfluxData for the management and support of the Services, and who will be responsible for establishing and managing Customer's use of the Services ("Account"), including the creation of usernames and passwords to access Customer's Account. Customer is solely responsible for maintaining the status of its User base. Customer will safeguard all User authentication credentials in its possession or under its control. Customer is responsible for all activities that occur under the Account. Customer will notify InfluxData immediately if Customer believes an unauthorized third party may be using Customer's Account or if Customer's Account information is lost or stolen.

2.3 InfluxData's Responsibilities. During the Subscription Term, InfluxData will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for planned downtime (of which InfluxData will give at least 48 hours' notice and which InfluxData will schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time). InfluxData may in addition perform unscheduled emergency maintenance for the security or performance of the Services; InfluxData will use commercially reasonable efforts to provide at least 30 minutes prior notification of emergency maintenance that InfluxData believes will cause downtime.

2.4 Customer's Responsibilities. Customer is solely responsible for the accuracy and integrity of the Customer Data that Customer inputs or provides for input into the Services. Customer and its Users must comply with the Acceptable Use Policy. Customer will ensure that its Users, its Third Party Service Providers, and its and their employees, agents and representatives comply with Customer's obligations under this Agreement, and Customer is responsible for their acts and omissions relating to this Agreement as though they were Customer's own.

Section 3. Proprietary Rights

3.1 License by InfluxData. Subject to the terms and conditions of this Agreement, InfluxData hereby grants to Customer a non-exclusive, non-transferable, limited license, without right to sublicense, for the Subscription Term, to access and use the Services in accordance with this Agreement, solely for Customer's internal business operations, and subject to the license metrics and other scope limitations specified in the applicable Sales Order. InfluxData reserves all other rights not expressly granted in this Agreement.

3.2 License by Customer. Customer hereby grants to InfluxData a non-exclusive, limited, royalty-free license, without right to sublicense, to use the Customer Materials solely as necessary to perform the Services for Customer. Customer reserves all other rights not expressly granted in this Agreement.

3.3 Ownership of Intellectual Property Rights.

3.3.1 Ownership and Use of Customer Materials. Customer retains all of its rights, title and interest and Intellectual Property Rights in and to the Customer Materials and Customer Confidential Information. No ownership interest in the Customer Materials or Customer Confidential Information is transferred or conveyed to InfluxData by virtue of this Agreement. InfluxData will use Customer Materials and Customer Confidential Information only for purposes of providing the Services, unless otherwise authorized in writing by Customer.

3.3.2 InfluxData's Intellectual Property and Ownership Rights. As between Customer and InfluxData, InfluxData and InfluxData's licensors retain and own all right, title and interest and all Intellectual Property Rights in and to the Services, the InfluxData Methodology, InfluxData's Confidential Information, the InfluxData Software, and all enhancements or improvements to, or derivative works of the foregoing created or developed by or on behalf of InfluxData (collectively, "InfluxData Intellectual Property"). Except as otherwise agreed in writing between the parties, nothing in this Agreement transfers or conveys to Customer any ownership interest in or to the InfluxData Intellectual Property.

3.4 Restrictions. Customer will not: (i) except to the extent, if any, permitted by applicable law or required by InfluxData's licensors, reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from any of the Services; (ii) reproduce, modify, or prepare derivative works of any of the Services or Documentation; (iii) distribute or display any of the Services or Documentation other than to Customer's Users; (iv) share, rent or lease the

Services, or use the Services to operate any timesharing, service bureau or similar business; or (v) publish or provide any benchmark, comparison or performance test results. Customer may have access to InfluxData content or third-party content, provided under a separate license, such as an open source license. In the event of a conflict between this Agreement and any separate license, the separate license will control with respect to the InfluxData content or third-party content that is the subject of such separate license.

3.5 Suggestions; Analytics. If Customer provides InfluxData with any suggested improvements or enhancements to the Services or InfluxData Software ("Suggestions"), then Customer also grants InfluxData a non-exclusive, perpetual, irrevocable, paid-up, royalty-free, worldwide, transferable license, with right to sublicense, to make, have made, sell, offer for sale, use, import, reproduce, distribute, display, perform, and make derivative works of the Suggestions. Except as otherwise specified in the DPA (as defined below), InfluxData may use Analytics Data for InfluxData's analytical purposes related to the provision and performance of the Services, the support of the Services and the InfluxData Software. Analytics Data means Customer's (and its Users') usage history and statistics that (i) has been aggregated with other data, and (ii) does not contain information that identifies Customer or its Users. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

Section 4. Fees and Payment

4.1 Services Fees. Customer's elected subscription plan for the Services is specified in the applicable Sales Order and includes (but is not limited to) pay as you go and pre-pay subscription plan options. Customer will pay using one of the payment methods InfluxData supports (including by credit card, check or an electronic payment method). Each subscription term for Services will commence on the Sales Order Effective Date and will continue for the period specified in the Sales Order or, if not so specified, one year (an "Initial Term"). The Initial Term and each Renewal Term (if applicable and as defined below) are individually referred to in this Agreement as the "Subscription Term". If Customer upgrades any of Customer's Service subscriptions during a Subscription Term, then the Subscription Term for the upgraded Service will be coterminous with the current Subscription Term and InfluxData will invoice Customer an amount equal to the difference between the original Service fee and the upgraded Service fee. If Customer subscribes to an additional Service,

the Subscription Term for that Service will begin on the Sales Order Effective Date for that Service and Customer will be separately invoiced for the applicable activation and Service fee for the additional Service.

- **(A)** Pay as you go plans. For Customers who elect a pay as you go Services subscription plan, InfluxData will calculate Customer's usage and bill fees and charges monthly and invoice Customer for the prior month's activity. Customer will pay InfluxData the applicable fees and charges for use of the Services as more fully described on the Site. Service subscription fees and other amounts are due and payable in US dollars immediately upon invoice. InfluxData may bill Customer more frequently for fees accrued if the Account is suspected to be fraudulent or at risk of non-payment. Fees and charges for any new Service or feature of a Service will be effective when InfluxData posts updated fees and charges on the Site, unless InfluxData expressly states otherwise in a notice. InfluxData may increase or add new fees and charges for existing Services Customers are using by giving Customer at least 30 days' prior notice, which can include by email or by posting notice of updated fees and charges on the Site.

- **(B)** Pre-pay plans. For Customers who elect a pre-pay Services subscription plan, invoices for Service subscription fees and other amounts are due and payable in US dollars within 30 days of the date of invoice. Except as expressly stated otherwise in any Sales Order, InfluxData will invoice Customer for Services in advance, at the rates or for the fees specified in the applicable Sales Order. Unless otherwise specified in the Sales Order, the Initial Term will automatically renew for additional terms of the same length of the Initial Term (each, a "Renewal Term"). Either party may decline renewal by notice in writing to that effect delivered to the other party at least 30 days prior to expiration of the then-current subscription term. Customer may not reduce Customer's commitment under the Services subscription plan specified in the Sales Order during the Services Subscription Term. Customer is not entitled to any refund of fees paid or relief from fees due if the volume of Services Customer actually uses is less than the volume Customer ordered, and Customer may not carry over any of the unused volume to Customer's next Subscription Term. If Customer wishes to reduce the volume of a Services subscription plan for a Renewal Term, then Customer must notify InfluxData at least 60 days before the start of the Renewal Term for the applicable Services; the reduction will be effective at the start of the Renewal Term. Fees for Services are subject to increases,

which will be effective beginning upon the first day of each Renewal Term. InfluxData will notify Customer of any increase prior to it becoming effective; notice may be in a form of an invoice. If Customer objects to the increase, then Customer may terminate its subscription to the affected Services for convenience by notice provided to InfluxData at any time within 30 days of receipt of the increase notice; any such termination will be effective on the later to occur of the expiration of the 30 day period or the then-current Subscription Term. Customer acknowledges that expiration of any discount or incentive programs to which Customer was previously entitled do not constitute fee increases.

4.2 Payment Terms. All amounts payable by Customer under this Agreement will be paid to InfluxData without setoff or counterclaim, and without any deduction or withholding. InfluxData may apply finance charges equal to 1.5% per month or the highest rate permitted by applicable usury law, whichever is less, to any amount not paid when due.

4.3 Taxes. Customer will be responsible for and will pay to InfluxData any applicable sales, use, or any value added or similar taxes (collectively, "Taxes") payable with respect to provision of the Services to Customer, or arising out of or in connection with this Agreement, other than taxes based upon InfluxData's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes.

4.4 Records and Inspection; Audit.

4.4.1 InfluxData Records. InfluxData will maintain reasonably complete and accurate accounting records to substantiate InfluxData's variable charges and expenses hereunder. InfluxData will retain such records for a period of at least two years from the date of the invoice applicable to such charges and/or expenses. Upon not less than 45 days prior written notice, an independent certified public accountant appointed by Customer may inspect, copy and audit such records at InfluxData's corporate offices.

4.4.2 Audit Conditions. Whenever a party or its designee conducts any audit or inspection under this Agreement, such party will comply, and will ensure that its appointed accountants comply with the following (collectively, the "**Audit Protection Conditions**"): audits and other inspections will be conducted at any time during the audited party's regular business hours; the auditing party and its auditors will comply with the audited party's reasonable security

requirements in conducting the inspection, and will use commercially reasonable efforts to minimize disruption to the audited party's business; the auditing party and its auditors will treat all information that they obtain from the inspection as Confidential Information of the audited party, except to the extent necessary for the auditing party to enforce its rights under the Agreement. In no circumstances will the auditing party or its auditors have access to any information protected by attorney client privilege or the "work product" doctrine nor, if InfluxData is the audited party, to any information pertaining to InfluxData's other customers, nor to any information relating to the audited party's margins. Unless an audit discloses a material non-compliance by the audited party with its obligations under this Agreement, the auditing party may exercise such audit rights no more than once during any twelve (12) month period. Unless the audit reveals a discrepancy in favor of the audited party of more than 10% of fees and expenses that should have been paid for the audited period, the auditing party will bear all costs and expenses relating to the audit, including compensation to InfluxData for personnel and materials provided to facilitate the audit, and InfluxData's then-current rates.

Section 5. Warranties

5.1 Warranties. InfluxData warrants to Customer that:

5.1.1 Performance Warranty. (a) During the Subscription Term, the Services made available to Customer for Customer's use will conform in all material respects to its applicable specifications set forth in the Documentation. (b) If any Services fails to conform to this warranty and Customer provides written notice of the non-conformance to InfluxData within the applicable Subscription Term then, as Customer's exclusive remedy and InfluxData's sole obligation: InfluxData will either repair or, at its option, replace the non-conforming Services with conforming Services or, if InfluxData is unable to correct the non-conformance within 30 days of receipt of such written notice from Customer, Customer may terminate the applicable nonconforming Services insofar as they apply to the non-conformance, and InfluxData will refund to Customer a pro-rata amount of any Services fees prepaid to InfluxData and applicable to the unutilized portion of the Subscription Term for the terminated Services.

5.1.2 Viruses and Lock-Outs. InfluxData will use commercially reasonable efforts, using then-current versions of commercially available anti-virus software and tools, to ensure that the Services, in the form provided by

InfluxData to Customer under this Agreement, contain no computer virus, Trojan horse, worm or other similar malicious code.

5.2 Scope. The warranty in Section 5.1.1(a) does not apply to any trial or evaluation subscription to the Services or InfluxData Software. The warranties in this Agreement will automatically abate to the extent that the Services have been modified by persons other than InfluxData's authorized employees or representatives, or other than at InfluxData's express direction. The warranties in this Agreement are for the sole benefit of Customer and may not be extended to any other person or entity.

5.3 Disclaimer Of Implied Warranties. Except as set forth in this Section 5, InfluxData makes no representation or warranty in connection with the Services which are provided "as is". Without limiting the foregoing, InfluxData does not warrant that the Services are completely free from all bugs, errors, or omissions, or will ensure complete security. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 5, INFLUXDATA DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

Section 6. Confidential Information; Personal Data; Security

6.1 Restrictions on use and Disclosure. Neither InfluxData nor Customer will disclose to any third party any information provided by the other party pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "Confidential Information"), and will make no use of such Confidential Information except under and in accordance with this Agreement. The parties agree that Confidential Information includes: information concerning Inventions, concepts, ideas, techniques, specifications, drawings, diagrams, models, samples, flow charts, computer programs and code and their associated documentation and programmer's notes, network topography and network configuration and access information, security policies

and processes, data, finances and plans, business plans, contracts, marketing plans, system implementation plans, business concepts, business procedures and business operations, pricing, market analysis, research, strategies, projections, forecasts and financial information and all materials related thereto; and any Personal Data provided by, or in connection with this Agreement. Confidential Information also includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Customer's Confidential Information includes Customer Data. InfluxData's Confidential Information includes any information regarding the InfluxData Methodology, Services, and Documentation.

6.2 Exclusions. Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

6.3 Disclosure Required By Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "Disclosure Order") then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

6.4 Independent Development. The terms of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

6.5 Processing of Personal Data.

6.5.1 No Personal Information; Responsibility of Customer. Customer hereby acknowledges that the Services do not require Customer to upload

Personal Data into the Services and Customer shall not upload Personal Data to the Services without InfluxData's express prior written consent in each instance. Customer is solely responsible for obtaining and will obtain all necessary consents, licenses and approvals for the processing of any Personal Data by InfluxData in connection with the Services.

6.5.2 Parties Compliance with applicable law; Data Processing Agreement.
The parties will comply, and will ensure that its employees and subcontractors comply (to the extent such subcontractors have access to Personal Data), with the requirements of applicable state and federal privacy laws and regulations governing any Personal Data processed in connection with the Agreement. The terms of the InfluxData Global Data Processing Agreement, governing the processing of Personal Data by InfluxData in order to provide the Services to Customer, are located at **https://www.influxdata.com/legal** ("DPA"). The DPA is hereby incorporated into this Agreement by reference. For purposes of the Standard Contractual Clauses (as referenced in the DPA) Customer and any of its affiliates are each the data exporter, and Customer's acceptance of this Agreement, or execution of a Sales Order, shall be treated as its execution of the Standard Contractual Clauses and applicable Appendices.

6.5.3 InfluxData's Obligations. InfluxData will be liable for any unauthorized access to Customer Data by third parties only to the extent resulting from InfluxData's failure to adhere to the requirements set out by applicable law, the InfluxData Security Program (as defined below) or from InfluxData's gross negligence or willful misconduct. The provisions of this Section 6.5.3 apply notwithstanding any provision of this Agreement or any other agreement between InfluxData and Customer (or any affiliate of Customer) to the contrary.

6.5.4 Security Program. To the extent applicable to the Services provided by InfluxData to Customer under this Agreement, InfluxData will implement and maintain commercially reasonable security measures designed to meet the following objectives (collectively, the "**InfluxData Security Program**"): (i) ensure the security and confidentiality of Customer Data in the custody and under the control of InfluxData; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that InfluxData's return or disposal of such Customer Data is performed in a manner consistent with InfluxData's obligations under the Agreement and applicable law. Customer acknowledges and agrees that it is commercially reasonable for InfluxData to rely upon the security processes and measures utilized by

InfluxData's cloud infrastructure providers. From time to time, the InfluxData Security Program may be further updated by InfluxData, in its sole discretion, in order to address evolving security standards and regulatory compliance requirements. InfluxData shall perform the Services in compliance with the InfluxData Security Program (and as updated), and shall not materially decrease the overall security of the Services at any time.

7. Suspension.

7.1 InfluxData may suspend Customer or any End User's right to access or use any portion or all of the Services immediately upon notice (which can include by email) to Customer if InfluxData determines: (A) that Customer's, or its Users' use of the Services: (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services, or the networks or data of any other InfluxData customer or business partner, (iii) does not comply with applicable law, (iv) may subject InfluxData or any third party to liability (v) could be fraudulent or (vi) Customer's non-use of the Services or inactivity for prolonged period of time (B) Customer or any End User is in breach of this Agreement (C) Customer is in breach of its payment obligations or (D) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. If InfluxData suspends Customer's right to access or use any portion or all of the Services, Customer remains responsible for all fees and charges incurred during the period of suspension. Reactivation of Customer's access to the Services is at InfluxData's sole discretion.

Section 8. Term; Termination of Sales Orders

This Agreement will will continue in effect until terminated in accordance with Section 8.1 or 8.2 below.

8.1 Termination for Cause. (A) In the event of a material breach of the Agreement by either party, the non-breaching party may terminate the Agreement or any Sales Order directly affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides

written notice of termination to the breaching party ("**Termination Notice**"), this Agreement or any such Sales Order will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, Customer's failure to pay any overdue fees and expenses within 30 days of InfluxData notifying Customer of the overdue payment, which notice may include informing Customer's project manager or accounts payable representative of the overdue payment in writing (including by email), will constitute a material breach of this Agreement. If Customer has not cured a material breach within the applicable cure period, then InfluxData may, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of InfluxData's obligations to provide Services under this Agreement. (B) If Customer terminates this Agreement or any Sales Order for breach in accordance with Section 8.1 above, then InfluxData will refund to Customer a pro-rata amount of any Services fees prepaid to InfluxData and applicable to the unutilized portion of the Subscription Term for terminated Services. (C) InfluxData may terminate this Agreement immediately upon notice to Customer for cause if InfluxData has the right to suspend under Section 7.

8.2 Termination for Convenience. (A) If Customer is on a pay as you go Services subscription plan, Customer may terminate the Services at any time by providing InfluxData notice (which may include email and/or the ability for Customer to close its Account on the Site). InfluxData may terminate any Services by providing Customer prior written notice of termination (which may include email) of at least thirty (30) days. Customer remains responsible for all fees and charges incurred through the termination date and for which InfluxData will immediately invoice. (B) If Customer is on a pre-pay Services subscription plan, either party may terminate any Services by providing the other party prior written notice of termination (which may include email) of the following length: if Customer is the terminating party, at least 30 days; and if InfluxData is the terminating party, at least 90 days. (C) Customer is not entitled to any refund or relief from payment of any Services fees paid or payable under this Agreement if Customer terminates this Agreement or an applicable Sales Order for convenience.

8.3 Fulfillment of Obligations on Termination. Termination of the Agreement or of any Services will not relieve Customer from any obligation to pay fees or reimburse expenses for Services performed prior to termination.

8.4 Post Termination Obligations. Following any termination of the Agreement or any Sales Order, each party will, within 30 days of such termination, (i) immediately cease use of any Confidential Information of the other communicated for the purposes of this Agreement or such Sales Order, and (ii) except as otherwise set forth in the DPA or Section 8.5 of this Agreement, return or destroy (and certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement or such Sales Order within 30 days of such termination.

8.5 Access to and Retention of Customer Data. Customer may download an export file of Customer Data stored on the Services at any time during the Subscription Term, and during the 15 day period following its termination or expiration. InfluxData will destroy or overwrite Customer Data within a reasonable period of time following termination of the applicable Sales Order, subject to conformance with InfluxData's backup and data retention policies. Notwithstanding the foregoing, InfluxData's deletion and retention obligations with respect to Personal Data shall be subject to the DPA between the parties (as applicable).

8.6 Survival. The provisions of Sections 1, 3, 4.4, 6, 8.1(B), 8.4-8.6, 10, 11 and 14 of this Agreement will survive any termination of this Agreement.

Section 9. Indemnification

9.1 InfluxData's Infringement Indemnification.

9.1.1 Defense and Indemnity. InfluxData's provision to Customer of the Services does not infringe any third party patent existing under the laws of the United States or Canada, or infringe any third party copyright, trademark or service mark, or result from misappropriation by InfluxData of any third party's trade secrets (collectively, an "**InfluxData Infringement**"). If any third party makes any claim against Customer that, if true, would constitute an InfluxData Infringement then, upon notification of such claim, InfluxData will, at its sole cost and expense, defend Customer against such claim and any related proceeding brought by such third party against Customer, and indemnify Customer from and against all damages finally awarded against Customer or agreed to be paid by Customer in a written settlement approved in writing by InfluxData, and resulting from the InfluxData Infringement. InfluxData's obligations under this Section 9.1.1 are conditioned upon Customer's compliance with the "Indemnification Conditions" (defined below).

"**Indemnification Conditions**" means the following conditions with which a party must comply in order to be entitled to defense or indemnification under the Agreement by the other party: (i) the indemnified party notifies the indemnifying party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the indemnified party or member of the indemnified party's legal department first knows of the claim, provided, however, that no failure to so notify an indemnifying party will relieve the indemnifying party of its obligations under this Agreement except to the extent that such failure materially prejudices defense of the claim, and except to the extent of damages incurred by the indemnifying party as a result of the delay; (ii) the indemnifying party is given primary control over the defense and settlement of the claim (subject to the foregoing, the indemnified party may nonetheless participate in the defense at its sole cost and expense); (iii) the indemnified party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the indemnifying party's prior written agreement; (iv) the indemnified party provides such assistance in defense of the proceeding as the indemnifying party may reasonably request, at the indemnifying party's reasonable expense; (v) the indemnified party complies with any court order or reasonable settlement made in connection with the proceeding; and (vi) the indemnified party uses all commercially reasonable efforts to mitigate its losses.

9.1.2 InfluxData's Mitigation Rights. If any Services supplied by InfluxData become (or in InfluxData's opinion are likely to become) the subject of any infringement or misappropriation claim, InfluxData may, and if Customer's use of the Services is enjoined, InfluxData must, at its sole expense, either: (i) procure for Customer the right to continue using the relevant Services; (ii) replace or modify the relevant Services in a functionally equivalent manner so that they no longer infringe; or (iii) terminate the applicable Sales Order or Customer's rights to use affected Services, and refund to Customer a pro-rata amount of any subscription fees prepaid to InfluxData and applicable to the unutilized portion of the Subscription Term for the terminated Services.

9.1.3 Exclusions. Notwithstanding the foregoing, InfluxData will have no obligation with respect to any infringement or misappropriation claim to the extent based upon (i) any use of the Services not in accordance with their applicable license rights, (ii) the combination of the Services with other products, equipment, software, services or data not supplied by InfluxData where the infringement would not have occurred but for such combination, (iii)

InfluxData's compliance with Customer's specifications, configuration requirements, or other instructions (except to the extent that InfluxData knew that such compliance would infringe a third party's Intellectual Property Rights), (iv) any use of any version of Services other than the most current version made available to Customer after notice from InfluxData that Customer must upgrade to such release to avoid an infringement or misappropriation claim and Customer has had a reasonable time in which to implement such upgrade, (v) any modification of the Services not made by InfluxData or at its express direction, (vi) any third party open source software, or (vii) any Customer Materials.

9.2 Customer's Infringement Indemnification.

9.2.1 Defense and Indemnity. If any third party makes any claim against InfluxData that InfluxData's use of any Customer Materials infringes any third party patent existing under the laws of the United States or Canada, or infringes or violates any third party copyright, trademark, service mark, privacy right or data protection right, or results from any misappropriation by Customer of such third party's trade secrets or privacy rights (collectively, a "**Customer Infringement**") then, upon notification of such claim, Customer will, at its sole cost and expense, defend InfluxData against such claim and any related proceeding brought by such third party against Customer, and Customer will indemnify InfluxData from and against all damages finally awarded against InfluxData or agreed to be paid by InfluxData in a written settlement approved in writing by Customer, and resulting from the Customer Infringement. Customer's obligations under this Section 9.2.1 are conditioned upon InfluxData's compliance with the Indemnification Conditions.

9.2.2 Mitigation Rights. If provision of Customer Materials is, or in Customer's reasonable opinion is likely to become, the subject of a claim of infringement or misappropriation of any intellectual property right of any third party, then Customer will have the right to: (i) procure the rights necessary for Customer to continue to provide Customer's Materials; (ii) replace or modify the Customer Materials in a functionally equivalent manner so that they no longer infringe; or, if the options described in (i) and (ii) above are not available to Customer on commercially reasonable terms, (iii) terminate InfluxData's rights to use the Customer Materials (in which case InfluxData's obligations to perform the Services will be reduced to the extent that InfluxData required the Customer Materials to perform, and any such termination will be treated as a termination for convenience by Customer).

9.2.3 Exclusions. Notwithstanding the foregoing, Customer will have no obligation under this Section 9.2 or otherwise with respect to any infringement or misappropriation claim to the extent based upon (i) any use or modification of the Customer Materials not in accordance with their applicable license rights as notified by Customer to InfluxData, (ii) combination of the Customer Materials with other products, equipment, software, services or data not supplied by Customer where the infringement would not have occurred but for such combination, but excluding combination in conjunction with the Services, (iii) Customer's compliance with InfluxData's specifications or instructions, (iv) any use of any version of any Customer Materials other than the most current version made available to InfluxData after notice from Customer that InfluxData must upgrade to such release to avoid an infringement or misappropriation claim and InfluxData has had a reasonable time in which to implement such upgrade, or (v) any data processed by the Customer Materials that Customer has not provided, made available, or required InfluxData to use or access.

9.4 Improper Use of Services. Customer will indemnify and hold InfluxData harmless from any claims, damages, losses, judgments, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any non-compliance with the Acceptable Use Policy by Customer, its Users or its Third Party Service Providers.

Section 10. Limitations and Exclusions of Liability

10.1 Exclusion of Certain Claims. SUBJECT TO SECTION 10.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER OR IN CONNECTION WITH THIS

AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

10.2 Limitation of Liability. Subject to Section 10.3, neither party's entire liability arising out of, or in connection with this Agreement will in any event exceed the fees paid to InfluxData under the Sales Order giving rise to the claim during the 12 month period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

10.3 Exceptions.

10.3.1. Sections 10.1 and 10.2 shall not apply to:
(i) either party's willful misconduct or gross negligence, or
(ii) either party's infringement or misappropriation of any Intellectual Property Rights or
(iii) the extent otherwise prohibited by applicable law.

10.3.2 Section 10.2 shall not apply to:
(i) either party's defense and indemnification obligations;
(ii) Customer's obligations to pay fees and expenses when due and payable under this Agreement;
(iii) either party's obligations under Section 6.1–6.3 (Confidential Information),
(iv) InfluxData's liability under Section 6.5 will not exceed an amount equal to two (2) times the fees paid by Customer to InfluxData under the affected Sales Order in the 12 month period immediately preceding Customer's first assertion of its claim.

10.3.3 Any amounts payable by an indemnified party to a third party pursuant to a judgement or to a settlement agreement approved in writing by an indemnifying party, liability for which falls within the indemnifying party's indemnification obligations under this Agreement, will be deemed direct damages for purposes of this Section 10.

10.4 General. Except as otherwise prohibited by law, Customer agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of Customer, or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Except as otherwise prohibited by law, neither party may

commence any action or proceeding under this Agreement more than two years after the occurrence of the applicable cause of action.

Section 11. Dispute Resolution

11.1 Governing Law. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of California and, where such laws are preempted by the laws of the United States, by the internal laws of the United States, in each case without regard to (i) conflicts of laws principles, and (ii) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods.

11.2 Disputes. Any disputes arising under this Agreement will be referred to an appropriate senior manager of Customer and an appropriate senior manager in InfluxData who will, within 10 days of written notice of a dispute being served by one on the other, meet by telephone or videoconference in a good faith effort to resolve the dispute without recourse to legal proceedings. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof that cannot be resolved by the parties, will be finally settled by binding arbitration conducted in the English language in San Francisco, California, U.S.A. under the Commercial Arbitration Rules and the Optional Rules for Emergency Measures of Protection of the American Arbitration Association ("AAA"). The arbitration will be heard by one arbitrator if the total amount in controversy is less than one million dollars ($1,000,000.00); otherwise the parties will jointly agree to three neutral arbitrators. Provided, however, that if the parties cannot agree to one or more arbitrators, (or if one party refuses to appoint an arbitrator) within 30 days after the initiation of the arbitration, then such arbitrators will be appointed by the AAA. Disputes about arbitration procedure will be resolved by the arbitrators, or failing agreement, by the AAA. The arbitrator(s) may proceed to an award notwithstanding the failure of the either party to participate in the proceedings. Discovery will be limited to mutual exchange of documents relevant to the dispute, controversy or claim; depositions will not be permitted unless agreed to by both parties. The arbitrator(s) will be authorized to grant interim relief, including to prevent the destruction of materials or documents involved in the dispute, protect trade secrets and provide for security for a prospective monetary award. The prevailing party will be entitled to an award of reasonable attorney fees incurred in connection with the arbitration in such amount as may be determined by the arbitrators. The award of the arbitrators will be the sole and exclusive remedy of

the parties and will be enforceable in any court of competent jurisdiction, subject only to revocation on grounds of fraud or clear bias on the part of the arbitrator(s). Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement.

Section 12. Modifications

InfluxData may modify this Agreement (including any policies) at any time by posting a revised version on the Site (including but not limited to https://www.influxdata.com/legal) or by otherwise notifying Customer (which may include by email or through Customer's Account). InfluxData will provide at least 90 days' advanced notice for materially adverse changes to any Services or Support Program ("**Advanced Notice**"). Subject to Advanced Notice with respect to materially adverse changes, the modified Agreement will be effective upon posting, or if InfluxData has notified Customer by email or Customer's Account, as stated in the email message. Continuing to use the Services after the effective date of any modified Agreement, Customer agrees to be bound by the modified Agreement. It is Customer's responsibility to check the Site and its Account regularly for modifications to the Agreement.

Section 13. Purchase Through Channel Partners

13.1 Applicability. This section 13 only applies to Customers purchasing Services through an authorized Channel Partner. If Customer is uncertain as to the applicability of this section to its purchase of Services, Customer should contact InfluxData for further information.

13.2. Channel Partners. If Customer acquired the Services from a Channel Partner, then this Agreement is not exclusive of any rights Customer obtains under the Channel Partner Sale Agreement; however, if there is any conflict between the provisions of this Agreement and the Channel Partner Sale Agreement, then the provisions of this Agreement prevail. If a Channel Partner has granted Customer any rights that InfluxData does not also directly grant to Customer in this Agreement, or that conflict with this Agreement, then Customer's sole recourse with respect to such rights is against the Channel Partner.

13.3. Subscriptions Through a Channel Partner. If Customer ordered the Services through a Channel Partner, then the Subscription Term will begin on the Sales Order Effective Date and, subject to the remainder of Section 8, will expire, renew and terminate in accordance with the terms of the Channel Partner Sale Agreement.

13.4. Purchases Through a Channel Partner. If Customer ordered the Services through a Channel Partner, then the provisions of Section 4 do not apply to Customer, and Customer's billing and payment rights and obligations are governed by the Channel Partner Sale Agreement. However, if the Channel Partner from whom Customer purchased the Services fails to pay InfluxData any amounts due in connection with Customer's use of the Services, then InfluxData may suspend Customer's rights to use the Services, with or without notice to Customer. Customer agrees that Customer's remedy in the event of such suspension is solely against the Channel Partner and that InfluxData is not liable to Customer in any manner for such suspension.

Section 14. Miscellaneous Provisions

14.1 Publicity; References. Unless otherwise specified in the applicable Sales Order, InfluxData may refer to Customer as one of InfluxData's customers and use Customer's logo as part of such reference, provided that InfluxData complies with any trademark usage requirements notified to it by Customer. Furthermore, if so specified in the applicable Sales Order, (i) InfluxData may either (a) issue a press release announcing the relationship between InfluxData and Customer, or (b) submit a joint press release to Customer for Customer's approval, such approval not to be unreasonably withheld or delayed; and (b) Customer will be a reference account for InfluxData, provided, however, that InfluxData will provide Customer with reasonable notice and obtain Customer's consent before scheduling any reference calls or site visits.

14.2 Compliance With Laws. InfluxData and Customer will comply with all applicable laws and regulations with respect to this Agreement, including U.S. export control laws. Neither party will have any liability to the other for any non-performance of their obligations under this Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its affiliates, nor any of its or their users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from dealing (including provision of software, products or

services) by virtue of any applicable law, regulation, or executive order, including US export control laws, and names appearing on the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

14.3 U.S. Government Rights In The Services. InfluxData provides the Services, including all related InfluxData Software technology and content, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with InfluxData to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

14.4 Equitable Relief. Each of Customer and InfluxData acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them will have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

14.5 Force Majeure. If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then, except with respect to obligations to pay any fees or expenses, the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or

remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease.

14.6 Captions and Headings. The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.

14.7 Severability; Invalidity. If any provision of this Agreement is held to be invalid, such invalidity will not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision will be interpreted to be only so broad as is enforceable.

14.8 Waiver. No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, will in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver will be effective only in the specific instance and for the purpose for which given.

14.9 Third Party Beneficiaries. Except as expressly set forth in this Agreement, no provisions of this Agreement are intended nor will be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. Notwithstanding the foregoing, InfluxData's suppliers of products and services delivered hereunder will enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such products and services as does InfluxData.

14.10 Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other, which will not be unreasonably withheld, provided, however, that either party may assign all, but not some of its rights and obligations under this Agreement to any of its affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets. Subject to the foregoing restriction on assignment by Customer, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

14.11 Notices. InfluxData will provide Customer with notices that affect InfluxData's customers generally (e.g., notice of an update made to the Services) by e-mail or by posting it on the InfluxData website or Site. InfluxData will provide Customer with any legal notices by first class mail or e-mail to the mailing or e-mail address Customer provided InfluxData on the applicable Sales

Order, or during Customer's registration for the Services, or to a substitute, updated mailing or e-mail address that Customer has provided to InfluxData for these purposes. Customer is responsible for keeping its mailing and e-mail address current with InfluxData. Notices that InfluxData sends electronically will be deemed received upon dispatch, and notices that InfluxData sends by first class mail will be deemed received within 3 days of dispatch, regardless of whether Customer actually receives the notice. Except as otherwise specified in this Agreement, all notices to be given to InfluxData under this Agreement must be in writing and sent to InfluxData's headquarters by prepaid mail or overnight courier at the address then-specified on the InfluxData website; such notices will be deemed received upon delivery to InfluxData.

14.12 Entire Agreement; Amendments. This Agreement constitutes and embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. This Agreement may not be modified or amended except by a written instrument executed by both parties, subject to Sections 12 and 13 above. In the event of any conflict or inconsistency between the provisions of this Agreement and the terms of any form of purchase order or invoice, the provisions of this Agreement will prevail. Customer's standard terms of purchase, if any, are inapplicable. In the event of any conflict between the terms of this Agreement and any Sales Order, the following order of precedence will apply, except to the extent expressly specified otherwise in the applicable Sales Order: (i) the Agreement, and (ii) the Sales Order.

14.13 Counterparts. Sales Orders and any amendments to this Agreement may be executed in one or more counterparts, which taken together will constitute a single agreement between the parties.