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1 DEFINITIONS.

- 1.1. "Maximum Capacity" means a maximum of four (4) Nodes (defined below), with each Node containing or provisioned with a maximum of either 32 GB of RAM or 8vCPUs, allocated to the MemSQL Software in a single cluster. (Note: *excluded from the four (4) Node calculation are those Node(s) which are used solely for MemSQL Cluster access, and which do not host Customer data (sometimes referred to as a "MemSQL Aggregator").*)
- 1.2. "MemSQL Core Technology" means the MemSQL Software, technology, and methodologies, including, without limitation, products, software tools, architecture, algorithms, class libraries, objects and Documentation existing as of the Effective Date or arising hereafter.
- 1.3. "Node(s)" or sometimes referred to as "Hosts") means a device, server, container or virtual machine that executes or hosts the MemSQL Software.
- 1.4. "Users" means employees and independent contractors of Customer authorized by Customer to access and use the Software on Customer's behalf subject to the terms of this Agreement.
- 1.5. "vCPU" means a hyperthread in a physical processor also referred to as a logical processor.

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5 **INDEMNIFICATION.** Customer will indemnify, defend, and hold MemSQL, its suppliers and affiliates harmless from and against any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and legal costs) that MemSQL or its suppliers or affiliates may incur as a result of any claim arising from or related to Customer Data, any breach of this Agreement, or any misuse or unauthorized use of the Software.

6 **TERMINATION.** Customer may terminate this Agreement by destroying all copies of the Software. MemSQL may terminate this Agreement and Customer's right to use the Software at any time if Customer fails to comply with any one or more terms of this Agreement, in which case Customer shall destroy all copies of the Software.

7 MISCELLANEOUS.

7.1. **Choice of Law; Jurisdiction.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under: (a) the laws of the State of California, U.S. if you are located in North or South America, (b) the laws of Singapore if you are located in Asia or Australia, or (c) the laws of England and Wales if you located outside of North or South America, Asia, and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of: (i) San Francisco, California when the laws of California apply, (ii) Singapore when the laws of Singapore apply, or (iii) London when the laws of England and Wales apply. Nothing in this section shall restrict MemSQL's right to bring an action (including for injunctive relief) against you in the jurisdiction where your place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and

the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

- 7.2. Independent Contractors. The parties are independent contractors. No agency, partnership, franchise, joint venture, or employment relationship is intended or created by this Agreement. Neither party has the power or authority to create or assume any obligation, or make any representations or warranties, on behalf of the other party.
- 7.3. Audit. MemSQL may audit the use of the Software on reasonable notice and/or via the telemetry data that you provide us via the Software. You agree to cooperate with MemSQL's audit and provide reasonable assistance and access to information. You agree that MemSQL shall not be responsible for any of your costs incurred in cooperating with the audit.
- 7.4. Compliance with Law; Export. Customer party will comply with all applicable laws, regulations, and orders of any governmental authority of competent jurisdiction in its performance under this Agreement, including but not limited to those applicable to data collection and the privacy and security of personal information, including trans-border data transfers and data breach notification requirements as required of each party by law. You acknowledge that the Software is subject to United States export control and economic sanctions laws, regulations, and requirements and to import laws, regulations, and requirements of certain foreign governments. You shall not, and shall not allow any third party to, export from the United States or allow the re-export or re-transfer of any part of the Software: (a) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. Government; (b) to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>); (c) to any known end-user or for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (d) otherwise in violation of any export or import laws, regulations or requirements of any United States or foreign agency or authority.
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- 7.6. Notices. Notices to MemSQL must be in writing delivered by overnight courier service to 534 4th Street, San Francisco CA 94107, USA, attention Legal Department.
- 7.7. Entire Agreement; Severability; Waiver. This Agreement sets forth the complete and final agreement of the parties concerning the subject matter hereof, and supersedes, replaces all prior agreements, written and oral, between them concerning the subject matter hereof. If a term of this Agreement to be invalid or unenforceable, the remaining provisions will continue in full force and effect. A party's consent to, or waiver of, enforcement of this Agreement on one occasion will not be deemed a waiver of any other provision or such provision on any other occasion.