

**Software Subscription Agreement  
Enterprise Trial and Developer Edition License Agreement**

MEMSQL, INC. ("MEMSQL") AGREES TO LICENSE AND/OR GRANT ACCESS TO CERTAIN OF ITS SOFTWARE AND SUPPORT & MAINTENANCE OR OTHER SERVICES TO YOUR BUSINESS OR ORGANIZATION ("CUSTOMER") ONLY IF (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THIS SOFTWARE SUBSCRIPTION AGREEMENT (THIS "AGREEMENT"), WHICH SHALL BE DEFINITELY EVIDENCED BY ANY ONE OF THE FOLLOWING MEANS: YOUR CLICKING THE "DOWNLOAD," "ACCEPTANCE" OR "CONTINUE" BUTTON, AS APPLICABLE; YOUR PLACING AN ORDER THROUGH AN ORDER DOCUMENT THAT INCORPORATES THESE GENERAL TERMS (AN "ORDER DOCUMENT") OR YOUR SIGNATURE ON A TANGIBLE COPY OF THIS AGREEMENT; OR YOUR INSTALLATION, ACCESS OR USE OF THE SOFTWARE OR THE SERVICE, AND SHALL BE EFFECTIVE ON THE EARLIER OF THE DATE ON WHICH YOU DOWNLOAD, ACCESS, COPY OR INSTALL ANY SOFTWARE OR SERVICES (INCLUDING ANY UPDATES OR UPGRADES) PROVIDED HEREUNDER OR SIGN THIS AGREEMENT (THE "EFFECTIVE DATE"). IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT CHECK THE ACCEPTANCE BOX, AND DO NOT DOWNLOAD, ACCESS, COPY, INSTALL OR USE THE SOFTWARE OR THE SERVICE.

**Evaluation & Development Edition Users: If you receive free of charge access to the Software via an "Enterprise Trial" or "Developer Edition" download, you are deemed a "Customer" for purposes of this Agreement except that you are subject to the additional restrictions and limitations set forth in Section 3.2 (Evaluation Access) below as to such Software. Existing MemSQL Enterprise Edition Customers are invited to initiate Enterprise Trials but are not licensed to use Developer Edition Software.**

UNLESS OTHERWISE SET FORTH HEREIN, THIS AGREEMENT MAY ONLY BE SUPERSEDED OR AMENDED BY A WRITTEN AGREEMENT AGREED UPON BY BOTH PARTIES THAT EXPRESSLY PURPORTS TO SUPERSEDE OR AMEND THIS AGREEMENT IN PART OR IN WHOLE.

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1. DEFINITIONS.

1.1. "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; provided that MemSQL Core Technology does not include any Deliverable created specifically for Customer as the result of a Professional Service and any Newly Created IP therein as set forth in Section 3.6.

1.2. "MemSQL Site" means [www.memsql.com](http://www.memsql.com) (and any successor or related site designated by us), as may be updated by us from time to time.

1.3. "Order Document" or "Order" means an order on the MemSQL form of provisioning document that is submitted by or on behalf of Customer, and executed by or on behalf of the parties referencing this Agreement and that specifies the Software and/or Services ordered by Customer, as well as the specific terms and conditions, for that particular transaction.

1.4. "Services" means those services, including Support and Professional Services, which may be provided to Customer by MemSQL pursuant to the terms of this Agreement and are expressly limited to those services directly related to Customer's use of the Software, and expressly exclude any other services.

1.5. "Software" means the MemSQL proprietary software and the associated technical documentation located at <http://docs.memsql.com/> ("Documentation") that MemSQL provides or makes available to Customer, as well as software updates, upgrades, bug fixes or modified versions that MemSQL

licenses or provides to Customer directly or indirectly throughout the Subscription Term.

1.6. "Subscription Term" means the fixed term, of not less than one (1) year, designated in an Order Document beginning on the Effective Date and ending at the end of the period stated therein. If no expiration date is specified in an Order Document, the Subscription Term shall be a one (1) year period ("Minimum Subscription Term"). A "Subscription" is the binding, non-cancelable contract for the use of the Software for the Subscription Term as set forth in an Order Document.

1.7. "Support" means the support and maintenance services, including any updates, upgrades, patches, enhancements and bug fixes for the Software that may be provided to Customer by MemSQL pursuant to the terms of this Agreement.

1.8. "Users" means employees and Contractors of Customer that Customer has permitted or authorized to access and use of the Software on Customer's behalf pursuant to the terms of this Agreement.

2. ORDERS, DELIVERY; SUPPORT.

2.1. Delivery. MemSQL will promptly Deliver the Software after it accepts an Order and Customer issues a purchase order referencing such Order. Unless otherwise stated in an Order, Customer is solely responsible for installing Software on Customer's own computer equipment. In some instances, Customer's purchasing relationship exists solely between Customer and an authorized reseller of MemSQL's Software and Services (a "Reseller"), in which case Sections 5.1-5.3

(Fees and Payment) will be inapplicable to such Order(s), and the Reseller shall be responsible for submitting Orders and the appropriate payment method therewith to MemSQL. An Order is not binding until MemSQL accepts the Order.

2.2. Support. MemSQL will use commercially reasonable efforts to provide Support to Customer in accordance with MemSQL's then-current terms and conditions set forth at [MemSQL Support Terms and Conditions](#) at the support tier stated in the applicable Order. The Support terms and conditions are subject to change at MemSQL's discretion; however, MemSQL will not materially reduce the level of Support during a Subscription Term for which Fees have been paid.

### 3. LICENSE GRANTS; RESTRICTIONS AND PROPRIETARY RIGHTS.

Customer's license and access rights and benefits, and MemSQL's obligations to Customer will vary, depending on the product and the type of license MemSQL is granting. If you purchased a license to MemSQL Software, your license will be subject to certain use and/or capacity restrictions, as identified on the applicable Order Document.

3.1. Downloadable Software Licenses. For MemSQL Customer downloadable software, MemSQL grants Customer a worldwide, non-exclusive, non-transferable, non-sublicenseable, and limited license during the applicable Subscription Term, to install and use the Software up to the maximum capacity ("Licensed Capacity"), and subject to the usage rules, specified in the applicable Order Document, and to use Documentation solely for Customer's internal business purposes.

3.1.1. Single-Node (Non-Production) Research Companion Licenses. For each License granted pursuant to Section 3.1, Customer is granted a non-exclusive, non-transferable, non-sublicenseable, and limited license during the applicable Subscription Term, to install and use an unlimited number of single nodes (i.e., a single instance running on a single server) of the Software for Customer's internal non-production use. Single-Node Research Companion Licenses are not offered or sold separately, and if Customer uses such Software in any production environment, Customer shall be invoiced for such usage and Customer agrees to pay the additional license fees in the manner provided herein.

3.2. Evaluation Software Licenses. From time to time, MemSQL may offer Customer trial or evaluation licenses to download and use the Software. If MemSQL has made available to you a free of charge trial or evaluation access to Software ("Evaluation Access"), your access is limited to internally evaluating such products to determine whether to purchase a Subscription from MemSQL. You may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. MemSQL has the right to terminate Evaluation Access at any time. Unless you

purchase a Subscription, upon any such termination or expiration your Evaluation Access will cease and you will no longer have the right to access any Customer Data (as defined in Section 4 below) loaded in the Software.

3.2.1. Enterprise Trial Licenses. If Customer receives free access or a trial or evaluation License to any "enterprise" version of the Software (a "Trial License"), then Customer may use one (1) copy of the Software in accordance with the terms and conditions of this Agreement for a thirty (30) day period, or such longer trial period represented by the applicable license key issued by or expressly authorized by MemSQL (the "Trial Period"). Trial Licenses are permitted solely for Customer's evaluation use to determine whether to purchase a Subscription to the Software. Customer may not use a Trial License for any other purpose. At the end of the Trial Period, the Trial License will expire (and this Agreement will terminate as to such License and continue to apply to any subsequent Subscription or use of the Software; if Customer decides not to obtain a Subscription upon expiration of the Trial Period, it will promptly cease using and will delete the Software from its computer systems. MemSQL has the right to terminate a Trial License at any time for any reason.

3.2.2. Developer Edition (formerly Community Edition) Licenses. If Customer receives or accesses the MemSQL Developer Edition Software or other MemSQL Software made available by MemSQL on a similar basis (a "Developer Edition" license), Customer acknowledges and agrees that such Software is licensed to Customer free of charge only for Customer's internal, non-competitive, development, research, testing and evaluation (i.e., "non-production use") in accordance with the terms of this Agreement. Developer Edition software is not suitable, nor licensed, for use by end users for commercial or organizational daily or routine business operations (i.e., "production use") or for purposes of any third-party Benchmarking as further prohibited by Section 3.3.1. Granting Developer Edition licenses is solely at MemSQL's discretion, and providing one version of the Software on a Developer Edition basis does not indicate that MemSQL will provide another version of the Software on a similar basis or make available any updates or upgrades, including those necessary for data security. Upon the event of any termination of this Agreement in accordance with Section 11, all Developer Edition Licenses shall be deemed terminated, and Customer will promptly delete the Software from its computer systems and refrain from any further use of MemSQL Developer Edition Software. **Important Note for Enterprise Edition Customers:** Developer Edition licenses are ineligible for Support, and Developer Edition Software may not be used, directly or indirectly,

in connection with any Software licenses that are eligible for Support. If Customer purchases an Enterprise Edition license, it will discontinue and/or refrain from any use of Developer Edition Software and may request Enterprise Trial License(s) for evaluation purposes.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, MEMSQL WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT, OR SERVICE LEVEL OBLIGATIONS WITH RESPECT TO ANY EVALUATION, TRIAL, DEVELOPER EDITION OR SINGLE-NODE RESEARCH LICENSES.

3.3. General Restrictions. Customer acknowledges that the Software, and its structure, organization, and source code, constitute MemSQL's and its suppliers' valuable trade secrets, and the Software is subject to the following restrictions:

3.3.1. Customer agrees not to, and not to authorize any third party to: (a) allow access or use of the Software or Service by anyone other than its Users; (b) distribute, embed, sell, rent, transfer, lease, lend, sublicense, loan, assign, pledge, grant a security interest in, or otherwise make the Software or Service accessible or available to any third party; (c) use the Software or Service in any service-bureau, timesharing, outsourcing or similar arrangement; or (d) disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of source code or APIs, except as permitted by applicable law to achieve interoperability, if MemSQL does not offer the means to do so when requested by Customer; (e) remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Software; (f) modify, adapt, recast, transform or otherwise prepare a derivative work of the Software or Service or portion thereof; (g) conduct any competitive analysis, publish or share with any third party any results of any technical evaluation or benchmark tests performed on the Software or Service, or disclose Software or Service features, errors or bugs to a third party without MemSQL's prior written consent ("Benchmarking"); or (h) engage in any act designed to circumvent any restriction set forth herein, in the Software, Service, the Site, or in an Order, including restrictions related to Licensed Capacity.

3.3.2. Internal Use Licenses; Users. The Software is licensed for Customer's internal business use and not for distribution or use by third parties. For clarity, however, Customer may make available to third parties Customer's hosted or applications or services that make use of or incorporate the Software, provided that (i) Customer's application or hosted service adds primary and significant functionality to the Software, (ii) Customer does not

embed or otherwise distribute the Software to third parties, and (iii) Customer does not provide third parties direct access to operate or control the Software itself. Subject to the terms and conditions of this Agreement, in addition to Customer's employees, Customer may permit its independent contractors and consultants who are not competitors of MemSQL ("Contractors") to serve as Users. Customer will remain responsible for compliance by each of its Users with all of the terms and conditions of this Agreement, and any use of the Software by any Contractors must be for the sole benefit of Customer.

3.3.3. Early Access/Beta Software. From time to time, Customer may be given access to pre-release or "beta" versions of the Software for the limited purposes of non-production testing and evaluation of such Software. Customer acknowledges that MemSQL shall have no obligation to release a generally available ("GA") version of such Software or to provide support or warranty for such versions of the Software for any production or non-evaluation use.

3.4. Ownership; Reservation of Rights. This is an agreement for use of MemSQL Software and not an agreement for sale. Customer acknowledges that it is obtaining only a limited right to use the Software on a licensed basis, and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Customer. Customer agrees that MemSQL or its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the MemSQL Core Technology. Nothing in this Section 3.4 shall be deemed as granting MemSQL ownership of Customer Data or in any way impacting Customer's ownership of Customer Data.

3.5. Third Party Code. The Software may contain or be provided with components which are licensed from third parties, including components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). Open Source Software may be identified in the Software, Documentation, or in a list of the Open Source Software provided to you upon your written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification, or reverse engineering.

3.6. Newly Created IP. Subject to the provisions of this Section 3.6, MemSQL shall assign to Customer any Newly Created IP (as defined below) in Deliverables upon payment in full by Customer of all amounts due for the Professional Service under which such deliverable was created. A "Deliverable" is a

deliverable that is identified in an SOW as being created by MemSQL through the performance of Professional Services specifically for Customer. "Newly Created IP" means intellectual property rights in any such Deliverables, excluding any MemSQL Core Technology. To the extent (if at all) any MemSQL Core Technology is incorporated into a Deliverable, MemSQL grants to Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable, worldwide license to use the MemSQL Core Technology solely to use the Deliverable in connection with the Software and Service as contemplated under this agreement during the Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit MemSQL's right to perform similar professional services for any other party or to assign any employees or subcontractors to perform similar Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

#### 4. CUSTOMER DATA; OBLIGATIONS OF CUSTOMER AND MEMSQL.

"Customer Data" means business information or other data loaded by or for Customer and/or processed by the Software or Service. Customer Data excludes the MemSQL Core Technology.

Customer shall retain all of its rights, title, and interest in and to its intellectual property rights in Customer Data. Customer grants to MemSQL a worldwide, limited-term license solely to host, copy, transmit and display Customer Data as reasonably necessary for MemSQL to support Customer's use of the Software, to ensure the security and administrate the Software and to deliver Services in accordance with this Agreement and for no other purpose.

Protection of Customer Data. We will maintain reasonable administrative, physical, and technical safeguards, consistent with generally prevailing industry standards, for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by MemSQL personnel, except as permitted by this Agreement.

#### 5. FEES AND PAYMENT.

5.1. Fees. Customer will pay MemSQL the fees for the Licenses and Services as set forth in the applicable Order ("Fees"). Customer acknowledges and agrees that if Customer's use of the Software exceeds the Licensed Capacity set forth on the applicable Orders or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be invoiced for such usage and Customer agrees to pay the additional fees in accordance with this Section 5.

5.2. Payment Terms. Except as otherwise specifically set forth on an Order Document, all fees are due and payable within thirty

(30) days after the date of invoice. Renewal Fees for any renewal Subscription Term (if purchased by Customer) will be due and payable within thirty (30) days of expiration of the then-current term. If Fees are not paid when due, Customer must discontinue use of the Software and MemSQL may suspend its performance, including its delivery of technical support of the Software or other Services. All Orders (including multi-year Subscriptions with annual payment schedules) are non-cancellable and all amounts paid are non-refundable, unless otherwise expressly set forth herein. Any invoiced amount not received by the due date will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by applicable law, whichever is lower.

5.3. Taxes. Fees are exclusive of taxes. Customer will pay any sales, use, value added, surtax and personal property taxes, duties, fees and other governmental assessments or charges arising out of this Agreement and the transactions contemplated herein, excluding taxes based on MemSQL's net income. Customer will make all payments free and clear of, and without reduction for, any withholding taxes.

5.4. Reconciliation. At MemSQL's request from time to time, not exceeding once per quarter, Customer will provide MemSQL with a report detailing its use of the Software, including its non-production and/or production use and using the self-monitoring capabilities of the Software or other means, and MemSQL may inspect Customer's records related to such report not more frequently than annually to ensure payment of Fees. Any on site review will be conducted during regular business hours at Customer's offices and will not unreasonably interfere with Customer's business. The parties will use reasonable good faith efforts to promptly resolve any discrepancies between licensed usage and actual usage.

6. Professional Services. MemSQL shall provide the number of person-days of professional consulting or training services ("Professional Services") purchased in the applicable Order Document or online ordering process. The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of either or both of: (a) assistance with Software installation, deployment, and usage; and (b) training in use of the Software. Customer shall have a license right to use any MemSQL Core Technology (including any documentation, code, Software, training materials or other work product) provided or made available as part of the Professional Services solely in connection with your permitted use of the Software or Service, subject to all the same terms and conditions as apply to your Software license (including Section 3.3 (General Restrictions)), and will be assigned ownership rights in those Deliverables, if any, created specifically for Customer pursuant to a SOW in accordance with Section 3. Each SOW must be signed by both parties before MemSQL shall commence work under such SOW. If the parties do not execute a separate SOW, the Professional Services shall be provided as stated on the Order Document and/or described in the applicable Services Data Sheet.



## 7. REPRESENTATIONS AND WARRANTIES.

7.1. Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is a corporation lawfully incorporated and validly existing pursuant to the laws of its place of incorporation; (ii) it has all requisite power and authority, corporate or otherwise, to execute, deliver and perform its obligations under this Agreement; and (iii) this Agreement constitutes its legal, valid and binding obligations and may be enforced against it.

7.2. Limited MemSQL Warranty. MemSQL warrants that the Software, when used as permitted hereunder, will operate in all material respects as described in the applicable Documentation, and that Services will be provided in a professional manner consistent with industry standards. Customer has thirty (30) days following the Delivery of the initial Software under the applicable License or the performance of the applicable Services, in which to notify MemSQL of a breach of the foregoing warranty (the "Warranty Period"). MemSQL's warranty obligation is limited as set forth below.

7.3. Limitations; Remedy. MemSQL does not warrant that the Software, the Services, or any Deliverable will be error-free, uninterrupted or meet Customer's specific requirements or that performance of the Services will be uninterrupted. MemSQL will have no warranty obligation under Section 7.2 for Customer's misuse or failure to use the Software or any Deliverable in accordance with its Documentation or this Agreement. Customer's sole and exclusive remedy, and MemSQL's sole and exclusive obligation, for breach of warranty will be MemSQL's correction of the program errors that cause the breach of warranty, or if MemSQL cannot substantially correct such breach in a commercially reasonable manner, a refund of the fees paid for the nonconforming Software or MemSQL's re-performance of the deficient Services. In the event of a refund remedy, Customer's licenses and right to use the Software or receive Services will end.

7.4. Disclaimer. THIS SECTION 7 IS A LIMITED WARRANTY AND, EXCEPT EXPRESSLY AS SET FORTH IN SECTION 7.2, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE THIRD-PARTY CODE, THE SERVICE AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER MEMSQL NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.

## 8. INDEMNIFICATION.

8.1. By MemSQL. MemSQL will defend against any action against Customer brought by a third party to the extent the action is based on a claim that the Software or Service infringes

a third party's U.S. patent, U.S. copyright or U.S. trademark (a "Claim") and indemnify Customer from the damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded against Customer or agreed in settlement by Customer resulting from such Claim. If your use of the Software or Service is (or in MemSQL's opinion likely to be) enjoined, then MemSQL may, at its own expense and at its option: (i) substitute substantially similar functionality for the Software or Service which renders it non-infringing; (ii) procure for Customer the right to continue to use the Software or Service; or if (i) and (ii) are not commercially reasonable, terminate this Agreement and refund Customer any prepaid, unused (pro-rated) Fees for the duration of the then-current Subscription Term. The foregoing obligations of MemSQL will not apply: (a) if the Software is modified by any party other than MemSQL, but solely to the extent the alleged infringement is caused by such modification; (b) if the Software or Service is used in combination with other products or processes not provided or authorized by MemSQL, but solely to the extent the alleged infringement is caused by such combination; (c) use of any version or release of Software other than the most current version or release made available to Customer by MemSQL, if its use would have avoided the infringement; (d) any unauthorized use of the Software or Service. THIS SECTION 8.1 SETS FORTH MEMSQL'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

8.2. By Customer. Customer will indemnify and hold MemSQL and its suppliers harmless against any claims, liabilities, costs, and expenses (including reasonable attorneys' fees) that MemSQL or its suppliers may incur as a result of a third-party claim arising from or related to Customer Data, or misuse or unauthorized use of the Software or Service by Customer or any User.

8.3. Conditions. All defense and indemnity obligations under Sections 8.1 and 8.2 are conditioned on the indemnitee (a) giving the indemnitor written notice of the relevant claim within thirty (30) days after the indemnitee receives notice of the Claim (or sooner if required by applicable law); (b) reasonably cooperating with the indemnitor, at the indemnitor's expense, in the defense of the claim; and (c) giving the indemnitor sole control of the defense and any settlement negotiations. The indemnitee may participate in the defense at its expense.

## 9. LIMITATION OF LIABILITY.

9.1. TO THE EXTENT PERMITTED BY LAW, NEITHER MEMSQL NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COVER, SUBSTITUTE GOODS OR SERVICES, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER

BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO: (1) PAYMENTS TO A THIRD PARTY ARISING FROM A PARTY'S OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION); AND (2) BREACH BY A PARTY OF SECTION 10 (CONFIDENTIAL INFORMATION), AND (3) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9.2. LIMITATION ON DIRECT DAMAGES. EXCEPT FOR: (A) CUSTOMER'S BREACH OF SECTION 3 (LICENSE GRANTS), (B) EITHER PARTY'S OBLIGATIONS IN SECTION 8 (INDEMNIFICATION), (C) EITHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIAL INFORMATION), OR (D) ANY DAMAGES THAT CANNOT BE LIMITED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, UNDER ANY OTHER LEGAL THEORY, EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO MEMSQL UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM. THE FOREGOING SHALL NOT INCLUDE OR LIMIT CUSTOMER'S OBLIGATION TO PAY FOR SOFTWARE, THE SERVICE, SERVICES, OR TAXES.

9.3. CUSTOMER'S INTENDED USE. THE SOFTWARE IS DESIGNED FOR GENERAL PURPOSE USE, AND IS NOT INTENDED FOR USE IN OR WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, MEDICAL, OR OTHER INHERENTLY DANGEROUS APPLICATIONS AND MEMSQL DISCLAIMS LIABILITY FOR ANY DAMAGES CAUSED BY ANY SUCH USE OF THE SOFTWARE. IT IS CUSTOMER'S RESPONSIBILITY TO TAKE ALL APPROPRIATE FAIL-SAFE, BACKUP, REDUNDANCY, AND OTHER MEASURES TO ENSURE THE SAFE USE OF ITS APPLICATIONS AND ARCHIVING OF CUSTOMER DATA.

NOTHING HEREIN SHALL BE INTENDED TO LIMIT A PARTY'S LIABILITY IN AN ACTION IN TORT (SEPARATE AND DISTINCT FROM A CAUSE OF ACTION FOR BREACH OF THIS AGREEMENT) FOR THE PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

## 10. CONFIDENTIALITY.

10.1. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of

disclosure. Customer's Confidential Information includes Customer Data; MemSQL Confidential Information includes the Software and Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

10.2. The receiving party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any confidential information of the disclosing party for any purpose outside the scope of this agreement and (ii) except as otherwise authorized by the disclosing party in writing, limit access to confidential information of the disclosing party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this agreement and who have signed confidentiality agreements with the receiving party containing protections not materially less protective of the confidential information than those herein. Neither party will disclose the terms of this agreement or any Orders to any third-party other than its affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's, or accountant's compliance with this "confidentiality" section.

10.3. Compelled Disclosure. The receiving party may disclose confidential information of the disclosing party to the extent compelled by law to do so, provided the receiving party gives the disclosing party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. If the receiving party is compelled by law to disclose the disclosing party's confidential information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not contesting the disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of complying and providing secure access to that confidential information.

## 11. TERMINATION.

11.1. Term. The term ("Term") of this Agreement will commence on the Effective Date and continue until all Subscriptions, license terms and Orders expire, unless earlier terminated in accordance with this Section 11.

11.2. Termination for Cause. In the event of a material breach of this Agreement (excluding any breaches for which an exclusive remedy is expressly provided), the non-breaching party may terminate this Agreement if such breach is not cured within thirty (30) days after written notice thereof (except that for a breach of Section 3.4 (“General Restrictions”), there will be no cure period). For clarity, material breach of this Agreement includes, but is not limited to, failure to timely pay amounts due hereunder, exceeding the scope of any License granted hereunder (including the Licensed Capacity), violating the License restrictions, and failing to protect the other party’s Confidential Information.

11.3. Effect of Termination. Upon the termination of this Agreement: (a) all licenses will terminate; (b) Customer will immediately discontinue all use of the affected Software, erase all full and partial copies of the Software and (subject to this Section 11.3) all other tangible embodiments of MemSQL Confidential Information in Customer’s possession or control, and promptly certify the same to MemSQL; (c) MemSQL may immediately cease providing the Services; (d) (subject to this Section 11.3), MemSQL will return or delete all tangible embodiments of Customer Confidential Information in MemSQL’s possession or control; and (e) Sections 1 (“Definitions”), 3.3 (“General Restrictions”), 3.4 (“Ownership; Reservation of Rights”), 5 (“Fees and Payment”), 7.3 (“Limitations”), 7.4 (“Disclaimer”), 8 (“Indemnification”), 9 (“Limitation of Liability”), 10 (“Confidential Information”), 11.3 (“Effect of Termination”), and 12 (“Miscellaneous”) will survive. If a party’s file retention policies or a valid legal order provides for backup or archival copies of files to be retained, such party will notify the other party of such policy or order, protect the other party’s Confidential Information as required hereunder, and permanently erase, delete, or destroy such Confidential Information as soon as permissible under such policy or order.

## 12. MISCELLANEOUS.

12.1. Assignment. This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. MemSQL may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of MemSQL’s assets or voting securities. Customer may not assign or transfer this Agreement, in whole or in part, without MemSQL’s written consent except that Customer may assign its rights and obligations under this Agreement, in whole but not in part, without MemSQL’s written consent in connection with any merger, consolidation, sale of all or substantially all of Customer’s assets or voting stock, or any other similar transaction provided that: (a) the assignee is not a direct competitor of MemSQL; (b) Customer provides prompt written notice of such assignment to MemSQL; (c) the assignee is capable of fully performing Customer’s obligations under this Agreement; and (d) the assignee agrees to be bound by the terms and conditions of this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

12.2. Force Majeure. If a party’s performance hereunder is prevented, hindered, or delayed by causes outside of the reasonable control of the affected party, the affected party, upon giving prompt notice to the other party, will be excused from performance for the duration of the condition, provided that the affected party uses commercially reasonable efforts to mitigate the effects.

12.3. Governing Law; Jurisdiction and Venue. 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 example a motion 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. Except as set forth herein, the parties’ rights and remedies are cumulative. The parties agree that injunctive relief (without bond) is an appropriate remedy for threatened breaches of Sections 3, 8, or 10, which will constitute immediate, irreparable harm.

12.4. Attorneys’ Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys’ fees and costs in connection with such action.

12.5. Severability; Waiver; Construction. If a court of competent jurisdiction adjudges any provision of this Agreement to be invalid or unenforceable, the remaining provisions of this Agreement, if capable of substantial performance, will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. All waivers must be in writing. 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. In this Agreement, the word “including” means “including but not limited to.” No presumption will operate in favor of or against any party as a result of its role in drafting this Agreement.

12.6. Subcontractors. MemSQL may use the services of subcontractors in connection with its performance of this Agreement, provided that MemSQL remains solely responsible for (i) compliance of any such subcontractor with the terms of

this Agreement and (ii) the overall performance of MemSQL as required under this Agreement.

12.7. Use of Aggregate Data. Customer agrees that MemSQL may collect, use and disclose quantitative data and metadata derived from the use of the Software (i) for its own internal, statistical analysis, (ii) to develop and improve the Software and (iii) to create and distribute reports and other materials regarding use of the Software. For clarity, any such data collected, used, and disclosed will be in anonymized aggregate form only and shall not identify Customer or its Users, or disclose any Customer Data.

12.8. 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.

12.9. Publicity. MemSQL may, in conformity with Customer's trademark usage guidelines, use Customer's name and logo in MemSQL's sales and marketing materials, including in business presentations, Customer lists, and on websites. Neither party will issue a press release regarding this Agreement without the other party's prior written consent. Neither party will disclose the terms of this Agreement to any third party, except as required by law.

12.10. Notice. Any notice, consent or waiver hereunder must be in writing, addressed to the attention of "Legal Department" at the address set forth above, and delivered by personal delivery, reputable rapid courier, or certified/registered mail, return receipt requested, and will be deemed given upon personal delivery, one (1) day after deposit with an overnight domestic courier, two (2) days after deposit with an international courier, or five (5) days after deposit in the certified or registered mail. A party may specify a new address by providing notice to the other party in accordance with this Section.

12.11. Compliance with Law; Export. Each 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.

12.12. Government End-Users. The Software is commercial computer software. If the User or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the software, or Documentation, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software and Service were developed fully at private expense. All other use is prohibited.

12.13. Supremacy; Modification. This Agreement will prevail over any written instrument submitted by Customer; the terms of any purchase order, acknowledgement, or similar document submitted by Customer to MemSQL will have no effect. If the express terms of an Order Document conflict with this Agreement, the terms on the Order Document will prevail, but only with respect to that Order Document. This Agreement cannot be varied or supplemented by course of dealing or by usage of trade. All modifications or amendments to this Agreement must be in writing and signed by both parties, except that subsequent renewals and purchases of additional Licensed Capacity and On-Demand Service (if applicable pursuant to Appendix A) can be procured by payment against an issued invoice or via the MemSQL Site, as set forth in Section 5 ("Fees") above.

12.14. Entire Agreement. This Agreement (inclusive of Exhibits) in its original English text, sets forth the complete, exclusive, and final agreement of the parties concerning the subject matter hereof, supersedes, replaces, and merges all prior and contemporaneous agreements, communications, and understandings, both written and oral, between them concerning the subject matter hereof. This Agreement may be executed in counterparts.