



## COMMUNITY LICENSE AGREEMENT

This Agreement is made and is effective as of the date on which Customer downloads or first uses the Software, each as defined below (the **"Effective Date"**), by and between FoundationDB, LLC (**"FoundationDB"**), a Delaware limited liability corporation having a place of business at 8245 Boone Blvd. #340, Vienna, VA 22182, and you (**"Customer"**) (referred to herein collectively as the **"Parties"** and individually as a **"Party"**).

### 1. DEFINITIONS

#### 1.1 Certain Definitions.

- (a) **"Agreement"** means these general terms and conditions.
- (b) **"Documentation"** means all user manuals and user documentation associated with the Software that is made available to Customer by FoundationDB pursuant to the terms of this Agreement.
- (c) **"Intellectual Property Rights"** means all intellectual and industrial property rights recognized in any jurisdiction, including copyrights, mask work rights, moral rights, trade secrets, patent rights, rights in inventions, trademarks, trade names and service marks (including without limitation applications for, and registrations, extensions, renewals, and re-issuances of, the foregoing).
- (d) **"License"** means licenses for Production Use and Non-Production Use provided by FoundationDB to Customer pursuant to this Agreement.
- (e) **"Non-Production Use"** means any use other than Production Use.
- (f) **"Production Use"** means any live or production use, or any direct or indirect use by software which is in live or production use or serving its final or intended or revenue-generating purpose.
- (g) **"Products"** means, collectively, the Software and Documentation.
- (h) **"Server Process"** means a single operating system process running the 'fdbserver' component of the Software.
- (i) **"Services"** means the services provided by FoundationDB to Customer pursuant to this Agreement.
- (j) **"Software"** means the object code version of the software identified on the FoundationDB website that Customer downloads or uses, and/or which Customer previously downloaded in accordance with a prior Community License Agreement. The term "Software" does not include, without limitation, any patches, updates, improvements, additions, enhancements and other modifications that may subsequently be made available to Customer pursuant to the terms of this Agreement.
- (k) **"Supported Platform"** means an operating system listed on the FoundationDB website (at [foundationdb.com](http://foundationdb.com)) as one with which the Software is compatible.

1.2 Other terms used in the Agreement are defined in the context in which they are used and have the meanings there indicated.

### 2. INTELLECTUAL PROPERTY RIGHTS; LICENSE



**2.1 Title; Ownership.** Except to the extent specifically provided in this Agreement, FoundationDB owns and retains all right, title and interest, including without limitation Intellectual Property Rights, in and to the Products and FoundationDB Confidential Information.

**2.2 License.** For so long as Customer is in compliance with its obligations under this Agreement, and subject to the limitations in Section 2.3, FoundationDB hereby grants, during the Term of this Agreement, to Customer a worldwide, non-exclusive and non-transferable license:

**2.2.1** to use the object code version of the Software solely for Customer's Production Use or Non-Production Use with no right to sublicense or otherwise offer the Software on a stand-alone basis; and

**2.2.2** to use the Documentation and other user manuals and user documentation associated with the Software solely in connection with the use of the Software as provided in subsection 2.2.1. For clarity,

(a) Customer may make copies of the Software for Customer's Production Use and/or Non-Production Use, subject to Section 2.3 below.

(b) Customer may make a reasonable number of copies of the Documentation for its internal use.

### **2.3 License Limitations.**

**2.3.1** Notwithstanding anything to the contrary in this Agreement, Customer may not (i) decompile, reverse engineer, disassemble, or otherwise attempt to derive, obtain or modify the source code of the Software (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by the Software); (ii) reproduce, modify, translate or create derivative works of all or any part of the Products; (iii) rent, lease, loan or otherwise distribute the Products to any third party; or (iv) use the Software to provide a database-as-a-service offering to any third party. Customer may not sublicense any of its license rights to the Products (including without limitation to customers of Customer or other third parties).

**2.3.2** The Software may only be used with the Supported Platforms.

**2.3.3** For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, Customer may not (and/or allow any third party to) make Production Use of more than 6 Server Processes.

**2.4 Delivery.** FoundationDB will deliver the Product to Customer in accordance with FoundationDB's standard delivery procedures.

**2.5 Maintenance & Support Services.** FoundationDB will not provide any maintenance and/or support services for Customer, unless specifically agreed in a separate agreement between the Parties. FoundationDB invites Customer to find subsequent versions of the Software at [foundationdb.com](http://foundationdb.com).

**2.6 Services.** FoundationDB will not perform any specific development, training or integration services for Customer, unless specifically agreed in a separate agreement between the Parties.

## **3. CONFIDENTIALITY**

### **3.1 Definition.**

(a) The term "**Confidential Information**" means information that is of a confidential, proprietary, or trade secret nature and is furnished or disclosed by FoundationDB (the "**Discloser**") to Customer (the



"**Recipient**") under this Agreement (including information exchanged in contemplation of entering into this Agreement) that is: (i) marked as confidential; (ii) if orally or visually disclosed, identified as confidential upon disclosure; or (iii) due to its character, nature, or method of transmittal, information that a reasonable person under like circumstances would treat as confidential. Confidential Information includes, without limitation, (A) product or service information, including designs and specifications, development plans, patent applications, and strategy; (B) software, including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers, assemblers and other information related to the software; any results or output produced by the software; and all user manuals and user documentation related to the Software; and (C) other intellectual property or business or technical information. Under this Agreement, Confidential Information will include, but not be limited to, derivative and residual forms of Confidential Information.

- (b) "**Confidential Information**" will not include information that: (i) is or becomes known to the public without breach of this Agreement by Recipient; (ii) is already known to or in the possession of Recipient at the time of disclosure; (iii) is independently developed by or for Recipient as evidenced by Recipient's own files and records; (iv) is rightfully obtained by Recipient from a third party that was lawfully in possession of the information and had the right to disclose the same; or (v) the Parties mutually agree in writing to release from the terms of this Agreement. Confidential information will not be deemed to be publicly known merely because all or a portion of such information is embodied in general disclosures or because individual features and/or components (or the combination of such features and components) are or become known to the public. The burden of proof that Confidential Information is subject to one of the above exclusions will be borne by the Party claiming such exemption.

**3.2 Protection of Confidential Information.** Recipient acknowledges that it may be furnished, receive or otherwise have access to Confidential Information of Discloser in connection with this Agreement and agrees that Confidential Information received from Discloser: (a) will only be used as necessary to achieve the purposes and objectives of this Agreement; (b) will not be disclosed to any third party without prior written approval of Discloser; (c) may only be disclosed within the receiving organization on a "need-to-know" basis to persons who have been advised of the existence of this Agreement and agree to be bound by its terms; and (d) will be treated with at least the same degree of care as Recipient treats its own Confidential Information, but in no event with less than a reasonable degree of care. Furthermore, Recipient agrees that it will not, and will not permit a third party to, (i) copy, decompile, reverse engineer, disassemble or create derivative works any Confidential Information except as specifically permitted under this Agreement or otherwise with the advance written consent of Discloser or (ii) alter, remove, or suppress any copyright, trademark, confidentiality, or other proprietary notices, marks or any legends placed, included, affixed, embedded or otherwise appearing in or on any Confidential Information, Software or Documentation or any related material; or fail to ensure that all such notices and legends appear on all full or partial copies of the Confidential Information, Software, Documentation or any related material.

**3.3 Exclusions.** If Recipient receives a subpoena or other valid administrative or judicial notice requesting the disclosure of Discloser's Confidential Information, Recipient will promptly notify Discloser. If requested, Recipient will provide reasonable cooperation to Discloser in resisting or limiting the disclosure at the Discloser's expense. Subject to its obligations stated in the preceding sentence, Recipient may comply with any binding subpoena or other process to the extent required by law, but will in doing so make all reasonable efforts to secure confidential treatment of any materials disclosed.



**3.4 Unauthorized Disclosure.** Recipient will notify Discloser promptly of any unauthorized use or disclosure of Confidential Information and cooperate with and assist Discloser in every reasonable way to stop or minimize such unauthorized use or disclosure.

**3.5 Ownership.** All Confidential Information will remain the property of Discloser and will be considered proprietary and confidential. Nothing in this Section 3 will be construed as transferring to Recipient, either expressly, by implication, estoppel, or otherwise, any right, title, and/or interest in and to the Confidential Information, including without limitation all worldwide Intellectual Property Rights. Any such transfer will only be as provided by other provisions of this Agreement.

**3.6 Return of Confidential Information.** Upon request by Discloser or otherwise at the termination of this Agreement, Recipient will return, delete or destroy all Confidential Information (including all copies of written information) furnished to Recipient, except in each case for such retention as may be required by applicable law, regulation or legal process and/or in connection with routine data back-ups on Recipient's computer systems and as required by Recipient's document retention policies and procedures, provided that Recipient will continue to maintain any such retained Confidential Information in confidence in accordance with this Agreement.

#### **4. DISCLAIMER OF WARRANTIES**

CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE PROVIDED "AS IS, WHERE IS" AND WITH ALL FAULTS. FOUNDATIONDB DISCLAIMS, WITH RESPECT TO THE PRODUCTS, ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, PERFORMANCY, ACCURACY, INTEGRATION, AND/OR ANY WARRANTIES ARISING OUT OF OR FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. FOUNDATIONDB MAKES NO WARRANTY THAT THE SOFTWARE WILL (A) OPERATE ERROR-FREE, FREE OF ANY SECURITY DEFECTS, IN AN UNINTERRUPTED MANNER, OR IN COORDINATION WITH OTHER THIRD PARTY SOFTWARE OR HARDWARE SELECTED BY CUSTOMER, OR (B) MEET CUSTOMER'S REQUIREMENTS. NO ADVICE, GUIDANCE OR INFORMATION PROVIDED BY FOUNDATIONDB WILL CREATE A WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ANY AND ALL RISK ARISING FROM CUSTOMER'S USE OF, OR INABILITY TO USE, THE PRODUCTS.

#### **5. TERM AND TERMINATION**

**5.1 Term.** This Agreement commences on the Effective Date and will continue until terminated.

**5.2 Automatic Termination.** This Agreement automatically and immediately terminates, without a requirement of notice: (a) on the date Customer brings a patent claim against FoundationDB or its licensors over patents that Customer claims are infringed by the Software; (b) when changes in applicable federal, state and local laws, regulations, ordinances and codes (including identifying and procuring required permits, licenses, approvals, and other consents) (collectively, "**Laws**") that conflict with the terms of this Agreement go into effect; (c) when Customer downloads or uses a subsequent version of the Software); or (d) immediately if a Party is in breach of any material obligation under the Agreement.

**5.3 Effect of Termination.** If this Agreement is terminated by either Party, then FoundationDB will have no further responsibility or liability hereunder as of the effective date of termination.



## 6. INDEMNITY

**6.1 Customer Indemnification.** Customer will, at its expense, indemnify and defend against and pay any final judgment against FoundationDB arising out of any claims by a third party of infringement, misappropriation and/or violation of any copyright, patent or other Intellectual Property Right arising out of or related to (i) modifications of the Products made by Customer or any third party other than FoundationDB; (ii) use of the Products in combination with other software or equipment; (iii) Customer's failure to use any new or corrected versions of the Products made available by FoundationDB; or (iv) use of the Products in a manner inconsistent with the Documentation or not permitted by this Agreement.

**6.2 Settlement.** FoundationDB shall have the right to approve in FoundationDB's sole discretion, any settlement (or portion thereof) that is not a monetary settlement, including settlements involving injunctive relief. FoundationDB may observe the proceeding and confer with the Customer at its own expense.

## 7. LIMIT OF LIABILITY

**7.1 Limitation of Liability.** If Customer should become entitled to claim damages from FoundationDB (including for breach of contract, breach of warranty, negligence or other tort claim), FoundationDB will be liable only for the amount of Customer's actual direct damages, not to exceed (in the aggregate for all claims) fifty dollars (US\$50.00).

**7.2 Consequential Damages.** EXCEPT WITH RESPECT TO (A) BREACHES OF CUSTOMER'S OBLIGATIONS SET FORTH IN SECTION 3 (CONFIDENTIALITY) OR SECTION 6.1 (INDEMNITY); AND (B) DAMAGES ATTRIBUTABLE TO CUSTOMER'S MISAPPROPRIATION, VIOLATION OR INFRINGEMENT OF FOUNDATIONDB'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, DAMAGES RESULTING FROM LOSS OF DATA, SECURITY BREACH, PROPERTY DAMAGE, LOST REVENUE, LOST SAVINGS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR FOUNDATIONDB'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.3** The limitations of liability set forth in this Section 7 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The Parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

## 8. LAWS AND DISPUTE RESOLUTION

**8.1 Choice of Law.** This Agreement will be governed by the laws of the Commonwealth of Virginia, without regard to any provision of Virginia law that would require or permit the application of the substantive law of any other jurisdiction. This Agreement will not be subject to (a) the United Nations Convention on Contracts for the International Sale of Goods, or (b) any version of the Uniform Computer Information Transactions Act (UCITA) as it is, or may be, adopted in any state.

**8.2 Court Proceedings.** The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Fairfax County, Virginia, solely for the purpose of



adjudicating any action to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for injunctive or equitable relief.

**8.3 Informal Dispute Resolution.** At the written request of either Party, the Parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Section 8.3. Each Party will appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. The representatives will furnish to each other all non-privileged information with respect to the dispute that the Parties believe to be appropriate and germane. The representatives will negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. Formal proceedings, as specified in Section 8.4, for the resolution of the dispute may not be commenced until the earlier of: (a) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (b) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a Party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for injunctive or equitable relief.

**8.4 Arbitration.** Except for any action to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for injunctive or equitable relief, any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The Tribunal will consist of one arbitrator. The place of arbitration will be Washington, DC. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing Party.

**8.5 Compliance with Laws.** Each Party, at its sole expense, will perform its obligations in a manner that complies with Laws. If a charge is made that a Party is not complying with any such Laws, such Party will promptly notify the other Party of such charges in writing. Each Party will comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Confidential Information, including without limitation the Export Administration Act (EAA), the Export Administration Regulations (EAR), the International Emergency Economic Powers Act (IEEPA), the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control. Each Party will, at its sole cost and expense, obtain and maintain in effect all permits, licenses, approvals and other consents related to its obligations under this Agreement.

**8.6 Limitation of Actions.** No proceeding, regardless of form, arising out of or related to this Agreement may be brought by either Party more than two (2) years after the accrual of the cause of action, except that (a) proceedings related to violation of a Party's proprietary rights or any duty to protect Confidential Information may be brought at any time within the applicable statute of limitations, and (b) proceedings for non-payment may be brought up to two (2) years after the date the last payment was due.

**8.7 Prevailing Party.** In the event a dispute arising under this Agreement results in litigation, the non-prevailing Party will pay the reasonable costs and attorneys' fees of the prevailing Party.

## **9. GENERAL**





**9.1 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement, including without limitation any prior Community License Agreement. This Agreement may be modified or amended solely in a writing signed by both Parties.

**9.2 Assignment.** Customer may not assign or otherwise transfer any right or obligation set forth in this Agreement (whether by operation of law or otherwise) without FoundationDB's prior written consent. Any purported assignment in violation of the preceding sentence will be void. FoundationDB may assign all or part of its rights or obligations set forth in this Agreement (whether by operation of law or otherwise) and all sums due or to become due pursuant to this Agreement for any reason. This Agreement will be binding upon the Parties' respective successors and permitted assigns.

**9.3 Notice.** To the extent any legal notice or other communication is required or permitted to be made or given by either Party pursuant to this Agreement, the notifying Party will provide notice by some reasonable means. Such notice will be in writing, in English. Customer consents to receive communications from FoundationDB electronically. FoundationDB may communicate with Customer by e-mail or posting notices on the FoundationDB web site. Customer agrees that all agreements, notices, disclosures and other communications that FoundationDB provides to it electronically satisfy any legal requirement that such communications be in writing.

**9.4 Severability.** The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties.

**9.5 No Waiver.** No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement.

**9.6 Third Parties.** This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement.

**9.7 Marketing.** Customer grants FoundationDB the right to (a) identify Customer as a FoundationDB Customer, and (b) with the prior approval in writing by Customer, which shall not be unreasonably withheld, use Customer's name, mark and/or logo on FoundationDB's website and/or in FoundationDB marketing materials.

**9.8 Commercial Policy.** Customer and FoundationDB agree that they will not directly or indirectly offer, pay, promise to pay, or authorize the payment of any money or thing of value to (i) any official of any government or its instrumentalities; (ii) any political party or official thereof, or candidate for political office; or (iii) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, political party or official thereof, or any candidate for a political office (collectively, "**Official Parties**"), in any case for the purpose of influencing any act of decision of such Official Parties in their capacity as such, to take any action (including any failure to act) to the benefit of FoundationDB or Customer. Should either Party ever become the subject of an audit or investigation under the Foreign Corrupt Practices Act or the Export in Arms Act, the other Party agrees to cooperate fully in connection with such investigation and to provide



such information and records with respect to its activities under this Agreement as may be reasonably requested. If Customer violates this Section 9.8, this Agreement automatically terminates.

**9.9 Excusable Delay.** Except for the obligations related to Confidential Information, License rights and restrictions, and payment, neither Party is responsible for any failure to comply with the terms of this Agreement where the failure or delay is due to causes beyond the reasonable control of the Party.

**9.10 Independent Relationship.** The relationship established by this Agreement is solely that of licensor and licensee, and each Party will act at all times as an independent party for its own account. Neither Party may represent or hold itself out as an agent or representative of the other. Neither Party has any authority to, and is expressly prohibited from, creating or assuming any obligation on behalf of the other, and from otherwise making or extending any representation, warranty, guarantee or other commitment for or on behalf of the other. Each Party agrees to defend, indemnify and hold harmless the other for any representation, warranty, guarantee or other commitment.

**9.11 Survival of Certain Provisions.** Any provisions of this Agreement that by their nature are intended to survive any termination, including without limitation Sections 6 and 7, will survive termination of this Agreement for any reason. For the avoidance of doubt and without limitation, Section 2.2 shall not survive the termination of this Agreement.

**9.12 Injunctive Relief.** Each Party acknowledges that (a) a breach by one Party of its obligations under this Agreement with respect to the Confidential Information or Intellectual Property Rights of the other Party, or (b) a violation by Customer of any License use requirements and restrictions imposed on such Party under this Agreement could cause irreparable harm and significant injury to the other Party that may be difficult to ascertain. Accordingly, each Party agrees that the other Party will have the right to seek and obtain immediate injunctive relief from such a breach or threatened breach of this Agreement, in addition to any other rights and remedies it may have, without requirement to post any bond. Such remedy will not be deemed to be the non-breaching Party's exclusive remedy but will be in addition to any and all other remedies available to the non-breaching Party at law or equity.

**9.13 Remedies Cumulative.** Except where expressly provided otherwise, all remedies provided in the Agreement are cumulative and in addition to and not in lieu of any other remedies available to a Party under the Agreement, at law, or in equity.