



## ENTERPRISE LICENSE AGREEMENT

This Enterprise License Agreement is made and is effective as of the first date on which Customer executes an Order, 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 the party specified on any Order(s) (as defined below) to this Agreement (**"Customer"**). FoundationDB and Customer are referred to herein collectively as the **"Parties"** and individually as a **"Party"**.

### 1. DEFINITIONS

Certain capitalized terms, if not otherwise defined in this Agreement, shall have the meanings set forth below:

- 1.1 **"Agreement"** means these general terms and conditions, together with any Orders executed by the Parties pursuant to Section 2, below.
- 1.2 **"Documentation"** means all user manuals and user documentation associated with the Software or a Layer that is made available to Customer by FoundationDB pursuant to the terms of this Agreement.
- 1.3 **"Fees"** means all amounts owed by Customer to FoundationDB under this Agreement.
- 1.4 **"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).
- 1.5 **"Layer"** means a translation engine that allows applications to communicate with the Software using different protocols or standards (e.g., ANSI SQL) and identified as a "Layer" by FoundationDB.
- 1.6 **"License"** means licenses for Production Use and Non-Production Use provided by FoundationDB to Customer pursuant to this Agreement.
- 1.7 **"Non-Production Use"** means any use other than the Production Use.
- 1.8 **"Products"** Means the Layers and the Software.
- 1.9 **"Production Use"** means any live or production use, or any direct or indirect use of the Software which is in live or production use or serving its final or intended or revenue-generating purpose.
- 1.10 **"Server Process"** means a single operating system process running the 'fdbserver' component of the Software.
- 1.11 **"Services"** means the services provided by FoundationDB to Customer pursuant to this Agreement.
- 1.12 **"Software"** means the object code version of the software identified and defined as Software in each Order. The term "Software" includes, 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.
- 1.13 **"Supported Platform"** means an operating system listed on the FoundationDB website (at [www.foundationdb.com](http://www.foundationdb.com)) as one with which the Software is compatible.

### 2. "MASTER" NATURE OF THE TERMS AND CONDITIONS

This Agreement describes the terms and conditions relating to the Software, Layers and Services available for purchase by Customer. Customer is not obligated to license or purchase (as applicable) any Products and/or Services unless and until the Parties both execute an order for such Products and/or Services (each, an **"Order"**). Orders will be attached and incorporated by reference into the Agreement. No Order will be effective until executed by duly authorized representatives of both Parties. Neither Party will be obligated to execute any Order.

### 3. INTELLECTUAL PROPERTY RIGHTS; LICENSE

- 3.1 **Software License.** Subject to the terms of this Agreement and any restrictions set forth in the Order, FoundationDB hereby grants to Customer a worldwide, limited, non-exclusive and non-transferable license, during each Order Term: (a) 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 for up to the number of Server Processes identified on the Order Form (if the Order Form fails to specify a number the number shall be one Server Process); and (b) to use the Documentation solely in



connection with the use of the Software as authorized above. For clarity, Customer may make copies of the Software for use in Customer's Production Use and/or Non-Production Use, subject to Section 3.3 below. Customer may make a reasonable number of copies of the Documentation for its internal use.

**3.2 Layer License.** Subject to the terms of this Agreement, FoundationDB hereby grants to Customer a worldwide, limited, non-exclusive and non-transferable license to use the object code version of each of its Layers solely in connection with Customer's Production Use or Non-Production Use of the Software with no right to sublicense or otherwise offer the Layers on a stand-alone basis. Customer may use as many copies of each Layer as it desires. Customer may not use Layers with databases other than the Software.

**3.3 License Limitations.** Except to the extent specifically permitted by Section 3.1, Customer may not (i) reproduce, modify, translate or create derivative works of all or any part of the Products; (ii) rent, lease, loan or otherwise distribute the Products on a stand-alone basis to any third party or otherwise allow a third party to use the Products on a stand-alone basis; (iii) use the Products for timesharing, subscription service, hosting, or outsourcing; 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 the right to sublicense the Products to customers of Customer or other third parties). The Software may only be used with the Supported Platforms. The Customer may not make Production Use of more than the aggregate number of Server Processes specified in the applicable Order(s).

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

**3.5 Title; Ownership.** FoundationDB owns and retains all right, title and interest, including without limitation Intellectual Property Rights, in and to the Products and FoundationDB Confidential Information, and any other intellectual property that results from the performance of the Services other than Customer Confidential Information. All rights not expressly granted under this Agreement by FoundationDB are hereby reserved by FoundationDB.

#### **4. MAINTENANCE & SUPPORT SERVICES.**

Subject to the terms and conditions of this Agreement, including the payment of the applicable Fees, FoundationDB will provide to Customer the "Maintenance & Support Services" ordered pursuant to an Order for the Products. The level of support and specific maintenance and support obligations will be consistent with the level of support ordered and consistent with FoundationDB's support policies and procedures for the applicable level of Maintenance and Support Services as described at [\[INSERT URL\]](#).

#### **5. FEES; PAYMENT**

**5.1 Fees.** In consideration for the licenses granted to Customer and the performance of FoundationDB's obligations under this Agreement, Customer shall pay to FoundationDB, without offset or deduction, certain Fees, in such amounts as may be determined by reference to an Order. Unless otherwise provided in such Order, all such Fees shall be due and payable within thirty (30) calendar days after date of the Order for Products or the date of the FoundationDB invoice for all other Fees. Customer will pay a finance charge equal to one percent (1%) per month, or the maximum rate allowed by law if less, on all amounts not paid in accordance with this Section 5.1; this interest will begin to accrue on the day after the payment due date and will accumulate on the outstanding balance on a daily basis until paid in full.

**5.2 Taxes.** All amounts payable under this Agreement shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. Customer will be responsible for payment of all such taxes (other than taxes based on FoundationDB's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any Fees hereunder, the grant of license rights hereunder, or the delivery of Services. Customer will make all payments required hereunder to FoundationDB free and clear of, and without reduction for, any withholding taxes. If a certificate of exemption or similar document is necessary in order to exempt any transaction from a tax, Customer will obtain such certificate or document.

**5.3 Disputed Charges.** Customer will pay undisputed amounts when due. If Customer disputes in good faith any amount owed by Customer, Customer may withhold such disputed amount (up to a total for all disputed amounts of the total amount owed by Customer for the three (3) immediately preceding calendar months) so long as Customer provides a written notice of dispute by the due date for the disputed amount including a detailed explanation of the basis for Customer's dispute. If FoundationDB does not agree with Customer's reasons for disputing any amount, the dispute will then be resolved under Section



11.1, however, the Parties will in good faith attempt to resolve such disputes within ninety (90) days of FoundationDB's receipt of Customer's notice of dispute. If the dispute on any charge is resolved in favor of FoundationDB, such charges will be due and payable within ten (10) days of such resolution, including applicable late fees from the original due date of payment by Customer for such charges.

5.4 **Assurances.** If Customer fails to pay any undisputed amount when due and FoundationDB has provided Customer with notice of such nonpayment, then in addition to assessing interest FoundationDB may (a) terminate any or all Licenses until paid; (b) suspend some or all Services until paid; and/or (c) require reasonable payment assurances ("**Assurances**") including pre-payment of Fees, guaranties or letters of credit and condition continuing Licenses and Services on receipt of such Assurances.

5.5 **Audit.** For the term of this Agreement and one (1) year thereafter, (a) Customer will maintain all books, records, contracts and accounts relating to its use of the Products, the receipt of Services, its payment of Fees and general compliance under this Agreement, and (b) FoundationDB will have the right, at its own expense and under reasonable conditions of time and place, to audit and copy any or all of such records once per calendar year (unless the prior audit revealed an underpayment and then FoundationDB may re-audit in the same calendar year). If any such audit discloses a breach of this Agreement or underpayment of any amounts by Customer or its employees or agents, Customer will, in addition to such other rights and remedies as may be available to FoundationDB as the result of such breach, pay to FoundationDB the reasonable cost of such audit and copying. FoundationDB will use information obtained from such audit only to verify and enforce Customer's compliance with the terms of this Agreement, to comply with any governmental reporting requirements and for such other purposes as required by law.

## 6. CONFIDENTIALITY

6.1 **Definition.** The term "**Confidential Information**" means information that is of a confidential, proprietary, or trade secret nature and is furnished or disclosed by one Party (the "**Discloser**") to the other Party (the "**Recipient**") under this Agreement (including information exchanged in contemplation of entering into this Agreement) that is: (a) marked as confidential; (b) if orally or visually disclosed, identified as confidential upon disclosure; or (c) due to its character, nature, or method of transmittal, information that a reasonable person under like circumstances would treat as confidential.

6.2 **Protection of Confidential Information.** Each Party acknowledges that it may be furnished, receive or otherwise have access to Confidential Information of the other Party in connection with this Agreement which shall remain the property of the Discloser. Each Party agrees that Confidential Information received from the other Party: (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. 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.

6.3 **Exceptions.** "**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.

6.4 **Exclusions.** Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law or the requirements of the Securities and Exchange Commission ("**SEC**") pursuant to the rules and regulations



promulgated by the SEC, as well as to the New York Stock Exchange and any other regulator charged with the administration, oversight or enforcement of regulations applicable to any business conducted by FoundationDB, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order or otherwise maintain the confidentiality of the information to be disclosed; or (b) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

## 7. WARRANTY

7.1 **FoundationDB Warranties.** FoundationDB represents and warrants that: (i) the Software will conform in all material respects to the Documentation for a period of ninety (90) days after the Software is delivered to Customer pursuant to this Agreement; and (ii) the Software is interoperable with the Supported Platforms for a period of ninety (90) days after the Software is delivered to Customer pursuant to this Agreement; provided that such warranty will not apply to failures to the extent such failures arise, in whole or in part, from (a) any use of the Software other than in accordance with the Documentation, (b) modification of the Software by Customer or any third party, or (c) any combination of the Software with software, hardware or other technology not provided by FoundationDB under this Agreement or specified by FoundationDB as interoperable with the Software. For all warranty claims made by Customer during the warranty period, FoundationDB will use commercially reasonable efforts to resolve, at no charge to Customer, any such non-conformities. This is Customer's sole and exclusive remedy for a breach of this warranty.

7.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY WARRANTED IN SECTION 7.1 OF THIS AGREEMENT, THE PRODUCTS, AND ANY OTHER MATERIALS AND/OR SERVICES PROVIDED BY FOUNDATIONDB ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND FOUNDATIONDB EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF QUIET ENJOYMENT, ACCURACY OF DATA, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY FOUNDATIONDB ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. FOUNDATIONDB DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

## 8. TERM AND TERMINATION

8.1 **Term.** This Agreement shall become effective upon the Effective Date and shall remain in full force and effect until the expiration or termination of any and all Order Terms set forth in each Order for the Product, unless terminated earlier as provided for under this Agreement. Each Order will include its own "Order Term."

8.2 **Termination by Either Party.** A Party may terminate an Order or the Agreement if the other Party is in breach of any material obligation under an Order and fails to remedy such failure or breach within thirty (30) days after receipt of written notice of such breach from the non-breaching Party, including, but not limited to failure to timely pay the Fees.

8.3 **Effect of Termination/Expiration.** If an Order is terminated by either Party, or otherwise upon the termination or expiration of this Agreement, then (a) within ten (10) days of the effective date of termination or the date of expiration, as applicable, Customer will certify in writing to FoundationDB that the Products and all other Confidential Information in the possession of Customer have been destroyed or otherwise secured in accordance with Section 6; (b) any License rights granted by FoundationDB under the applicable Order will immediately terminate as of the effective date of termination or the date of expiration, as applicable; (c) Customer will promptly pay all unpaid amounts accrued under the terminated or expired Order; (d) each Party shall return or destroy all Confidential Information of the other Party in its possession; and (e) FoundationDB will have no further responsibility or liability thereunder as of the effective date of termination or the date of expiration, as applicable.

## 9. INDEMNITY

9.1 **FoundationDB Indemnity.** FoundationDB shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities awarded to a third party arising out of any claim by a third party that the Products as delivered by FoundationDB infringes or misappropriates, as applicable, any U.S. patent issued as of the Effective Date or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States, provided that Customer gives FoundationDB (a) prompt written notice of such claim; (b) sole authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as FoundationDB may reasonably request, at FoundationDB's expense, in connection with such defense and/or settlement. Notwithstanding the



foregoing, FoundationDB shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Products with products, services, information, materials, technologies, business methods or processes not furnished by FoundationDB; (2) modifications to the Products, which modifications are not made by FoundationDB; (3) failure to use updates to the Products provided by FoundationDB; or (4) use of the Software except in accordance with the Documentation (circumstances under the foregoing clauses (1), (2), (3), (4), and (5), collectively, "**Customer Indemnity Responsibilities**"). Upon the occurrence of any claim for which indemnity is or may be due under Section 9.2, or in the event that FoundationDB believes that such a claim is likely, FoundationDB may, at its option (i) appropriately modify the Product so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer any unused license Fees under the then current Order Term(s). The obligations set forth in this Section 9 shall constitute FoundationDB's entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

**9.2 Indemnification by Customer.** Customer shall indemnify, hold harmless, and defend FoundationDB from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities awarded to a third party resulting from a claim by a third party arising from or in connection with Customer Indemnity Responsibilities. FoundationDB agrees to give Customer (a) prompt written notice of such claim; (b) sole authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Customer shall not settle any third-party claim against FoundationDB unless such settlement completely and forever releases FoundationDB with respect thereto or unless FoundationDB provides its prior written consent to such settlement. In any action for which Customer provides defense on behalf of FoundationDB, FoundationDB may participate in such defense at its own expense by counsel of its choice.

## **10. LIMIT OF LIABILITY**

**10.1 Limitation of Liability.** Excluding any breaches of Section 9 (Confidentiality) and any misappropriation or infringement of the other Party's Intellectual Property Rights, if either Party should become entitled to claim damages from the other Party (including for breach of contract, breach of warranty, negligence or other tort claim), such Party's total liability in connection with this Agreement will not exceed (in the aggregate for all claims) the amount paid, or payable, by Customer to FoundationDB in the twelve (12) months immediately preceding the event giving rise to liability hereunder.

**10.2 Consequential Damages.** EXCEPT WITH RESPECT TO (A) BREACHES OF CUSTOMER'S OBLIGATIONS SET FORTH IN SECTION 6 (CONFIDENTIALITY) AND SECTION 9 (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.

**10.3** The limitations of liability set forth in this Section 10 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement.

## **11. LAWS AND DISPUTE RESOLUTION**

**11.1 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. 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.

**11.2 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 11.2. 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, 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.

**11.3 Compliance with Laws.** Each Party, at its sole expense, will perform its obligations and exercise its rights 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 and the Foreign Corrupt Practices Act. 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. Without limiting the foregoing, Customer will be required to obtain all permits, licenses and other consents necessary for the development and distribution of the Products contemplated by any Order. If Customer violates this Section 11.3, FoundationDB may terminate this Agreement upon notice.

## **12. GENERAL**

**12.1 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. This Agreement may be modified or amended solely in a writing signed by both Parties.

**12.2 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, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, that Customer may assign the Agreement to any company which controls, is controlled by, or is under common control with Customer, or in the event of a merger, acquisition or sale of all or substantially all of the assets thereof. Notwithstanding the foregoing, 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 if the assignee or transferee is a competitor of, or in competition with, FoundationDB. 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.

**12.3 Order of Precedence; Interpretation.** If there is any conflict between the general terms and conditions of this Agreement and the terms contained in any Order, the Parties will attempt to read any such conflicting provisions consistently, however, in the event such a consistent reading cannot be accomplished, the Order will take precedence over such other terms solely with respect to such Order and solely with respect to such conflicting terms. This Agreement has been mutually negotiated, and is deemed to have been prepared at arm's length at the joint direction and construction of the Parties and is to be interpreted in accordance with its terms without favor to either Party.

**12.4 Notice.** Any legal notice or other communication required or permitted to be made or given by either Party pursuant to this Agreement will be in writing, in English, and will be deemed to have been duly given: (a) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (b) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of the notice is promptly sent by another means specified in this Section 12.4; or (c) when delivered if delivered personally or sent by express courier service. All notices will be sent to the other Party at its address as set forth below or at such other address as the Party may specify in a notice given in accordance with this Section 12.4.

<b>In the case of Customer:</b> To the address specified in an Order	<b>In the case of FoundationDB:</b> FoundationDB, LLC 8245 Boone Blvd. #340 Vienna, VA 22182 Attn: Legal Department
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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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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.

**12.9 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 or any Order where the failure or delay is due to causes beyond the reasonable control of the Party.

**12.10 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.

**12.11 Survival of Certain Provisions.** Any provisions of this Agreement that by their nature are intended to survive any expiration or termination will survive expiration or termination of this Agreement for any reason.

**12.12 U.S. Government End-Users.** Each of the components that constitute the Licensed Application is a "commercial item" as that term is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Application with only those rights set forth herein.

Each Party has caused its authorized representative to execute this Agreement as of the Effective Date.

Customer: \_\_\_\_\_

FoundationDB, LLC

By (Signature): \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_