



CRUNCHY DATA EVALUATION AGREEMENT

This Crunchy Data Evaluation Agreement (“**Agreement**”) describes the terms and conditions under which Crunchy Data Solutions, Inc., with a principal place of business at 146 Fairchild Street, Suite 134, Charleston, SC 29401 (“**Crunchy**”), will provide you with certain Software and Documentation (each as defined below and collectively “**Materials**”) associated with Crunchy PostgreSQL Container Suite (the “**Product**”) for evaluation purposes during the period beginning on the date on which you were first granted access to the Materials (the “**Start Date**”) and ending on the date ninety (90) days from the Start Date (the “**End Date**”), unless otherwise agreed by Crunchy and the Customer in writing (the “**Evaluation Period**”). By accessing or using the Materials, you hereby agree to the terms of this Agreement and agree that the terms of this Agreement will govern your use of the Materials.

1. GRANT OF RIGHTS.

1.1 Grant. Subject to the terms and conditions of this Agreement, Crunchy grants you (hereafter, the “**Customer**”) a non-exclusive, non-transferable, revocable license, during Evaluation Period to: (a) internally use, perform, and display the software provided by Crunchy as part of Product (“**Software**”) for evaluation purposes and (b) internally reproduce and use the documentation materials accompanying the Software (“**Documentation**”) in support of the Customer’s evaluation of the Product.

1.2 Limitations. The Customer will not, and will not permit others to: (a) reproduce all or part of the Software; (b) reproduce all or part of the Documentation other than as permitted by Section 1.1; (c) duplicate, modify, alter, adapt, enhance, improve, revise, or summarize Software or any part thereof; (d) modify, translate, or create derivative works of, or decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code form or structure of, the Materials; (e) assign, share, timeshare, sell, rent, lease, sublicense, distribute, grant a security interest in, or otherwise transfer the Materials, or the Customer’s limited right to use same; (f) remove, alter, or obscure any proprietary notices or labels on the Materials; (g) disclose any non-public information contained within the Materials; or (h) use the Materials for any purpose or in any manner other than as expressly provided in this Agreement.

2. SUPPORT. During Evaluation Period, Company will provide the Customer with the contact information for a Crunchy pre-sales engineer for technical support in the installation and use of Software and Products, and will use its commercially reasonable efforts to respond to and resolve reported problems with Software and Products; however, Crunchy has no obligation under this Agreement to resolve such reported problems. At any time during the evaluation, Customer may elect to subscribe to commercial support for the Product pursuant to the terms of Crunchy’s subscription support agreement.

3. OWNERSHIP. All right, title, and interest, including all intellectual property rights, in and to the Materials shall be owned and retained by Crunchy.

4. TERM AND TERMINATION. The term of this Agreement shall commence on Start Date and expire upon the earlier of: (a) End Date; (b) the Customer’s subscription for commercial support for the Product pursuant to a mutually acceptable subscription agreement; or (c) upon Crunchy’s written notice to the Customer of a breach of this Agreement that is not cured within five days of receiving notice of breach. Upon expiration or termination of this Agreement, the licenses granted hereunder shall terminate effective immediately and the Customer shall promptly (i) discontinue use of the Materials, (ii) to the extent Customer has not subscribed for commercial support for the Product pursuant to a mutually acceptable subscription agreement, destroy all printed and electronic copies of the Materials, and (iii) at the request of Crunchy, certify that the Customer has complied with the foregoing requirements.

5. SURVIVAL. Sections 3 (Ownership), 6 (Disclaimer of Warranties, Liability), and 7 (General) will survive any expiration or termination of this Agreement.

6. DISCLAIMER OF WARRANTIES, LIABILITY. All Materials are provided “as is.” Neither Crunchy nor any Crunchy partner, supplier, or distributor make any warranties, express, implied or otherwise, regarding the Materials accuracy, completeness or performance. To the extent permitted by applicable law, neither Crunchy nor any Crunchy partner, supplier, or distributor shall be liable for any claims, losses or damages of any kind, whether direct, indirect, incidental, special or consequential, suffered by any person including the Customer, arising from the use of the Materials. Further, and without limitation to the foregoing, neither Crunchy nor any Crunchy partner, supplier, or distributor shall be liable for any claims, losses or damages of any kind, whether direct, indirect, incidental, special or consequential, suffered by any person including the Customer, to the extent it would not have arisen but for the Customer’s failure to comply with the terms of this Agreement, and the Customer agrees to indemnify, defend and hold harmless Crunchy and Crunchy’s partners, suppliers, or distributors from and against any such liability. In no event shall the Customer be liable to Crunchy or Crunchy’s partners, suppliers, or distributors or for special, indirect, incidental, consequential, or punitive damages (including, but not limited to any damages resulting from loss of use, loss of data, loss of profits or loss of business) arising out of or in connection with this Agreement.

7. GENERAL. The Parties agree that this Agreement is for their mutual benefit. The Parties are independent contractors. The Customer may not assign this Agreement without the prior written consent of Crunchy. Any purported assignment in violation of the foregoing shall be null and void. This Agreement shall be governed in all respects by Virginia law, excluding any conflict of laws principles that would require the application of the laws of another jurisdiction. The Parties acknowledge that money damages would not be sufficient remedy for the Customer’s breach of this Agreement and that Crunchy shall be entitled to equitable relief, including injunction and specific performance, as a remedy for that breach. Such remedies shall not be deemed exclusive remedies for breach, but shall be in addition to all other remedies available to Crunchy. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction such provision will be deemed modified so as to be valid and enforceable to the greatest extent possible under applicable law and the validity of the remaining provisions hereof shall not be affected thereby. The Customer agrees that it will not assist with or participate in any export or diversion of the Software or the Documentation in violation of applicable U.S. laws and regulations. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral. No amendment to, or waiver of rights under, this Agreement shall be effective unless in a writing signed by authorized representatives of each party. Software and the accompanying Documentation are each a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “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, Company provides Software, and the accompanying Documentation to U.S. Government end users (and to non-U.S. government end users, to the extent such government operates under laws similar to those U.S. laws addressed by C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4) only pursuant to the terms and conditions herein.
