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**2. Restrictions.** Licensee will not: (a) copy or use the Software in any manner except as expressly permitted in this Agreement; (b) use or deploy the Software in excess of the number of Licensed Nodes and Embedded Database Instances for which Licensee has paid the applicable Subscription Fee as to an Enterprise License; (c) transfer, sell, rent, lease, lend, distribute, or sublicense the Software to any third party; (d) use the Software for providing time-

sharing services, service bureau services or as part of an application services provider or as a service offering primarily designed to offer the functionality of the Software; (e) reverse engineer, disassemble, or decompile the Software (except to the extent such restrictions are prohibited by law); (f) alter, modify, enhance or prepare any derivative work from or of the Software; (g) alter or remove any proprietary notices in the Software; or (h) export the Software in violation of U.S. Department of Commerce export administration rules or any other export laws or regulations. If Licensee does not comply with the license terms or the foregoing restrictions, Couchbase may terminate or suspend Licensee's license to the Software (without refund or credit) until Licensee comes into compliance with such terms and restrictions.

**3. Proprietary Rights.** The Software (and any modifications or derivatives thereto) and all Deliverables, are and shall remain the sole property of Couchbase and its licensors, and, except for the license rights granted herein, Couchbase and its licensors retain all right, title and interest in and to the Software, including all intellectual property rights therein and thereto. The Software may include third party open source software components. If Licensee is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following: (a) for acquisition by or on behalf of civil agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Agreement and as specified in Subpart 12.1212 of the Federal Acquisition Regulation (FAR), 48 C.F.R.12.1212, and its successors; and (b) for acquisition by or on behalf of the Department of Defense (DOD) and any agencies or units thereof, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Agreement and as specified in Subparts 227.7202-1 and 227.7202-3 of the DOD FAR Supplement, 48 C.F.R.227.7202-1 and 227.7202-3, and its successors. Manufacturer is Couchbase, Inc.

**4. Support.** This Section applies only to Enterprise Licenses, but not to Free Licenses. Couchbase offers several levels of Support Services for the Software. Couchbase will provide Licensee with the level of Support Services indicated on the Order and paid for by Licensee. For all Licensed Nodes and Embedded Database Instances within a Production Deployment, all such nodes and instances must be at the same level of Support Services, including any instances that are used for disaster recovery or backup that are associated with the Production Deployment. Different Production Deployments can be at different levels of Support Services. Similarly, as to instances in a development or test environment running the Software, all Licensed Nodes and Embedded Database Instances must be at the same level of Support Services – but such Licensed Nodes may be at a different support level than the Production Deployment(s). When using the Cross Data Center Replication

feature, Licensee must have all Licensed Nodes at the same level of Support Services for all instances on all sides of the replication connection, including if one side of the connection is only used for disaster recovery or backup.

**5. Payments.** This Section applies only to Enterprise Licenses, but not to Free Licenses. Licensee will pay Couchbase the applicable Subscription Fees and applicable fees as set forth in each Order. All payments of fees or charges under this Agreement shall be made in the currency stated on the Order and are due within thirty (30) days of the date of the invoice. Late payments will bear interest at the lesser of one and one-half percent (1½%) per month or the maximum rate allowed by law. In addition, Licensee will reimburse Couchbase for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts. All fees payable under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. Fees are exclusive of, and Licensee is responsible for all duties and taxes (including Value Added Tax which shall be paid by Licensee, if applicable, at the rate and in the manner for the time being prescribed by law), except for taxes based on Couchbase's net income. All fees are non-refundable, except to the extent expressly provided for in this Agreement.

5A. If Licensee sends Couchbase a purchase order ("PO"), the PO will be deemed a binding contract offer, which Couchbase can accept by signing the PO (thereby forming a mutually agreed Order governed by this Agreement); in such case the only terms listed on the accepted PO which will form part of the Order are the Commercial Details; and all other terms (whether additional or conflicting with the Agreement) on a PO will be void and without effect, even if Couchbase signs the PO. All accepted POs will automatically be governed by this Agreement (even if the PO does not reference the Agreement). "Commercial Details" means the identified product(s), quantity (e.g, number of Licensed Nodes and/or Embedded Database Instances), price, server size metric, support level, and subscription start and end date.

**6. Records Retention and Audit.** Licensee shall maintain complete and accurate records to permit Couchbase to verify Licensee's compliance with the Agreement (including the number of Licensed Nodes used by Licensee), and provide Couchbase with such records within ten (10) days of request. Upon at least thirty (30) days prior written notice, Couchbase may audit Licensee's use of the Software to assess whether Licensee is in compliance with the terms of this Agreement. Any such audit will be conducted during regular business hours at Licensee's facilities and will not unreasonably interfere with Licensee's business activities. Licensee will provide Couchbase with access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to Couchbase, then Couchbase will invoice Licensee, and

Licensee will promptly pay Couchbase, for such underpaid fees based on Couchbase's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the Subscription Fee paid by Licensee for the Software, then Licensee will also pay Couchbase's reasonable costs of conducting the audit.

**7. Confidentiality.** Licensee and Couchbase will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The terms of this Confidentiality section shall survive termination or expiration of this Agreement. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information. A party may disclose the other party's Confidential Information to the extent required by any law or regulation.

**8. Disclaimer of Warranty.** THE SOFTWARE AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. COUCHBASE DOES NOT WARRANT THAT THE SOFTWARE OR THE SERVICES PROVIDED HEREUNDER WILL MEET LICENSEE'S REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS LICENSEE MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED. COUCHBASE HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

## **9. Indemnification of Third Party Claims.**

**9.1 Indemnification.** Subject to Section 9, Couchbase will indemnify and defend Licensee from and against any damages finally awarded against Licensee in connection with any third party claims that the Software and Services infringe any United States patent, United States copyright or United States trademark or other intellectual property rights; provided that: (a) Licensee promptly notifies Couchbase of the claim; (b) Licensee gives Couchbase all necessary information regarding the claim and reasonably

cooperates with Couchbase; and (c) allows Couchbase to control the defense and all related settlement negotiations.

**9.2 Injunction.** If use of the Software and Services are enjoined, or Couchbase determines that such use may be enjoined, Couchbase will, at its sole option and expense, (a) procure for Licensee the right to continue using the affected Software and Services; (b) replace or modify the affected Software and Services so that they do not infringe; or (c) if either option (a) or (b) is not commercially feasible in Couchbase's reasonable opinion, as applicable, terminate the licenses and refund Licensee a pro-rata amounts of the Subscription Fees, and terminate the Services and refund the fees for the Services that were infringing.

**9.3 Exclusions.** Couchbase will have no liability for any infringement claim, (A) as to Software, (i) based on modifications to the Software made by a party other than Couchbase, to the extent a claim would not have occurred but for such modifications, (ii) based on the use of other than the then-current, version of the Software, unless the infringing portion is also in the then-current, unaltered release, (iii) based on the use, operation or combination of the Software with non-Couchbase programs, data, or equipment to the extent such infringement would have been avoided but for such use, operation or combination, (iv) attributable to any third party open source software components, or (v) to the extent based on Licensee's use of the Software other than in accordance with this Agreement or the applicable Documentation; or (B) as to Services, (i) based on modifications to the Services made by a party other than Couchbase, to the extent a claim would not have occurred but for such modifications, (ii) based on Licensee's use of the Services in violation of this Agreement, and such use causes such infringement, or (iii) based on infringement resulting from the combination of the Services, with any hardware, data or software not provided by Couchbase.

**9.4 Sole Remedy.** THE TERMS OF THIS SECTION CONSTITUTE THE ENTIRE LIABILITY OF COUCHBASE, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**9.5 Applicability.** Section 9 applies only to Enterprise Licenses, but not to Free Licenses.

**10. Subscription Term Termination.** The Agreement shall begin on the Agreement Effective Date, and shall remain in effect until terminated by a party by sending written notice to the other party. As to the Software, the "Subscription Term" for Enterprise Licenses shall begin on the earlier of (a) the Order effective date, and (b) the first date of Productive Use. The

Subscription Term will continue for a period of time paid for. As to Free Licenses, the Subscription Term begins on the date of download, and lasts until terminated. Subject to Couchbase's rights under Section 2 above, either party may terminate this Agreement or an Enterprise License prior to the end of a term if the other party materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach. Licensee's obligation to make a payment of any outstanding, unpaid fees shall survive termination of this Agreement. Upon termination or expiration of any license, Order, or this Agreement, Licensee will promptly return or destroy (and provide written certification of such destruction) the applicable Software and all copies and portions thereof, in all forms and types of media. As to a Free License, a party may terminate such license at any time, for convenience by providing written notice to the other party. The following sections will survive termination or expiration of this Agreement: Sections 2, 3, 5-13.

**11. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COUCHBASE OR ITS LICENSORS BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, OR THE SERVICES PROVIDED BY COUCHBASE HEREUNDER INCLUDING, WITHOUT LIMITATION, DAMAGES OR OTHER LOSSES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT WILL COUCHBASE'S OR ITS LICENSORS' AGGREGATE LIABILITY TO LICENSEE, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNTS PAID BY LICENSEE TO COUCHBASE THAT ARE ATTRIBUTABLE TO THE ORDER FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION FIRST GIVING RISE TO THE LIABILITY. The parties expressly acknowledge and agree that Couchbase has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Couchbase and Licensee and form a basis of the bargain between the parties.

**12. General.** Neither party shall be liable for any delay or failure in performance (except for any payment obligations) due to causes beyond its reasonable control. Neither party will, without the other party's prior written

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**13. Definitions.** Capitalized terms used herein shall have the following definitions: “Confidential Information” means any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure including the Software and any non-public technical and business information (including pricing). Confidential Information does not include information that (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality to the disclosing party; (c) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure. “Embedded Database Instance” means the number of instances of the “Couchbase Lite” product storing data on a local device (such as a mobile device, laptop, etc.) which may sync with a remote server. “Documentation” means the technical user guides or manuals provided by Couchbase related to the Software. “Licensed Node” means an instance of the Software running on a server, including a physical server, server blade, virtual machine, software container, or cloud server. “Software” means the object code version of the applicable Couchbase product you download or as reflected in an Order. “Subscription Fee” means the fee applicable to use of the Software (or as specified in an Order) for the right to use the Software for up to the number of Licensed Nodes and/or Embedded Database Instances paid for. The Subscription Fee includes fees for Support Services. “Subscription Term” means, collectively, the initial subscription term described in Section 10. “Support Services” means the technical support and Software maintenance services paid for (with the right to receive Software updates and upgrades made generally available by Couchbase) as described in the then-current Couchbase support policy (located at [www.couchbase.com/support-policy](http://www.couchbase.com/support-policy)). “Production Deployment” means all Licensed Nodes and Embedded Database Instances within a particular cluster or clusters that are being used to support a live workload or application. “Order” means a transaction document (such as a signed sales

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## **Developer Preview**

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**4. Support.** Couchbase Inc. will not provide any technical or other product support for the Software.

**5. Confidentiality.** Licensee and Couchbase Inc. will maintain the confidentiality of Confidential Information. The receiving party of any

Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The terms of this Confidentiality section shall survive termination of this Agreement. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information.

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**7. Agreement Term and Termination.** The term of this Agreement shall begin on the Effective Date and will continue for the period of time noted in Section 1 above, at which time both the Agreement and the license stated herein shall expire. Couchbase Inc. may terminate this Agreement if Licensee materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for ten (10) days following written notice of the breach. Upon termination of this Agreement, Licensee will, at Couchbase Inc.'s option, promptly return or destroy (and provide written certification of such destruction) the applicable Software and all copies and portions thereof, in all forms and types of media. The following sections will survive termination or expiration of this Agreement: Sections 2, 3, 5, 6, 7, 8, 9, and 10.

**8. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COUCHBASE INC. OR ITS LICENSORS BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS

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**9. General.** Couchbase Inc. shall not be liable for any delay or failure in performance due to causes beyond its reasonable control. Neither party will, without the other party's prior written consent, make any news release, public announcement, denial or confirmation of this Agreement, its value, or its terms and conditions, or in any manner advertise or publish the fact of this Agreement. Notwithstanding the above, Couchbase Inc. may use Licensee's name and logo, consistent with Licensee's trademark policies, on customer lists so long as such use in no way promotes either endorsement or approval of Couchbase Inc. or any Couchbase Inc. products or services. Licensee may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Couchbase Inc.'s prior written consent. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All waivers must be in writing and signed by both parties. All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, by confirmed facsimile, overnight courier service or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified above or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt. This Agreement shall be governed by the laws of the State of California, U.S.A., excluding its conflicts of law rules. The parties expressly agree that the UN Convention for the International Sale of Goods (CISG) will

not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Any amendment or modification to the Agreement must be in writing signed by both parties. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. No additional or conflicting terms set forth on any purchase order, order acknowledgement or other document shall have any force or effect and are hereby rejected unless expressly agreed upon by the parties' duly authorized representatives in writing. Each of the parties has caused this Agreement to be executed by its duly authorized representatives as of the Effective Date. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**10. Definitions.** Capitalized terms used herein shall have the following definitions: "Confidential Information" means any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Software and any non-public technical and business information. Confidential Information does not include information that (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure. "Documentation" means any technical user guides or manuals provided by Couchbase Inc. related to the Software. "Couchbase" means Couchbase, Inc. "Couchbase Website" means [www.Couchbase.com](http://www.Couchbase.com). "Software" means the object code version of the applicable elastic data management server software provided by Couchbase Inc. and downloaded by Licensee from the Couchbase Website or otherwise used by Licensee.

If you have any questions regarding this Agreement, please contact us at [sales@couchbase.com](mailto:sales@couchbase.com).

## \* Oracle Java SE Runtime Environment (JRE) 8

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