



## CUSTOMER AGREEMENT

This Customer Agreement (this “**Agreement**”) is entered into between you and MongoDB, Inc. If you represent an organization, you represent and warrant that you are authorized to agree to this Agreement on behalf of your organization.

**1. Definitions.** The following terms have the following meanings:

“**Affiliate**” means an organization that controls, is controlled by, or is under common control with, a party, where “control” means direct or indirect ownership of more than 50% of the voting interests of the organization.

“**Confidential Information**” means information a party designates as confidential or reasonably considers as confidential, and includes pricing information on an Order Form. “Confidential Information” excludes information that is (a) or becomes publicly available through no fault of the recipient, (b) received from a third party without a duty of confidentiality, (c) independently developed by the receiving party without breaching this Agreement, or (d) rightfully known or lawfully in the possession of the receiving party prior to disclosure from the other party.

“**Consulting Services**” means the consulting or professional services included in your Subscription.

“**Customer**”, “**you**” and “**your**” means the organization that agrees to an Order Form or downloads the Software for a free trial.

“**Deliverable**” means a work provided to you as a part of the Consulting Services, including any report.

“**Documentation**” means the instructions, specifications and information regarding the Software available at <https://docs.mongodb.com/>.

“**MongoDB**”, “**we**”, “**our**” and “**us**” means the MongoDB company that agrees to an Order Form.

**“Order Form”** means an ordering document for Subscriptions signed by both parties that refers to this Agreement or submitted by you through an authorized third-party platform.

**“Server”** means a virtual machine or container that stores data up to the amount of RAM specified on an applicable Order Form.

**“Software”** means the MongoDB Enterprise database software and any other software included with a Subscription, including any generally available updates to such software, but excluding (a) beta offerings and (b) open source software components, each of which has its copyright notice and license included in the license file and Documentation.

**“Subscription”** means a subscription for our Software, Support, or Consulting Services set forth in an Order Form.

**“Support”** means support, if any, included in a Subscription.

## **2. Subscriptions.**

(a) **Generally.** We will provide you with the Software, Support and Consulting Services included in the Subscription. We will provide you with Support in accordance with the applicable support policy available on our website, currently available at <https://www.mongodb.com/support-policy>. While we may modify our support policy from time to time, we will not modify it in a way that materially and adversely affects your Support. Your Affiliates may purchase Subscriptions directly from us or our Affiliates by signing an Order Form and you may allow an Affiliate to use your Subscriptions as long as you are responsible for the Affiliate’s compliance with this Agreement.

(b) **Free Evaluation and Development.** MongoDB grants you a royalty-free, nontransferable and nonexclusive license to use and reproduce the Software in your internal environment for evaluation and development purposes. You will not use the Software for any other purpose, including testing, quality assurance or production purposes without purchasing an Enterprise Advanced Subscription. We provide the free evaluation and development license of our Software on an “AS-IS” basis without any warranty.

(c) **Enterprise Advanced Subscription.** MongoDB grants you a nontransferable and nonexclusive license during the term of the Subscription to use and reproduce the Software in your internal environment for the purposes and on the number of Servers stated on the Order Form. You will cover each Server used by an application with an Enterprise Advanced Subscription.

**3. Consulting Services.** You will provide MongoDB with reasonable assistance and information to facilitate scheduling and performance of Consulting Services. You will also appoint an engagement manager to help ensure effective delivery of the Consulting Services. Consulting Services and any Deliverables are accepted when delivered unless otherwise set forth in an Order Form. We may engage qualified subcontractors to provide the Consulting Services, and we are responsible for any subcontractor's compliance with this Agreement. We grant you a royalty-free, perpetual, nontransferable and nonexclusive license to use and reproduce any Deliverables for your internal business purposes.

**4. Your Responsibilities.** As a condition to your use of the Software, you will not, and will not allow any third party to: (a) decompile, disassemble, translate, reverse engineer or attempt to derive source code from any portion of the Software; (b) sell, sublicense, distribute, market, or commercialize the Software, your Subscription or any Deliverables, provided that you may use the Software in connection with an application available to your end customers as long as they cannot access the Software directly; (c) directly or indirectly circumvent or violate the technical restrictions of the Software; (d) remove any identification, proprietary, copyright or other notices in the Software, Documentation or Deliverables; (e) modify or create a derivative work of any portion of the Software; (f) publicly disseminate performance information about, or analysis of, the Software, including benchmarking test results, or your Subscription; (g) use the Software on more Servers than licensed on an Order Form; (h) use the Software or Support in connection with any application that is not covered by an Enterprise Advanced Subscription; or (i) access or use the Software in a way intended to avoid incurring fees or exceeding usage limits or quotas. You will comply with applicable laws in connection with your use of Software, Deliverables, Consulting Services and your Subscriptions, including any applicable U.S. export regulations and anti-corruption laws.

**5. Payment and Taxes.** You will pay undisputed fees and reimburse any expenses in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR) as set forth on and in accordance with an Order Form. Customer shall only be liable for such travel expenses as approved by Customer and funded under the applicable ordering document. MongoDB shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). If applicable law requires you to withhold any amount from your payment, you will provide us with copies of documents related to your withholding upon our request.

**6. Confidentiality.** This Agreement supersedes any applicable non-disclosure agreement between the parties with respect to your Subscriptions. The receiving party will use the disclosing party's Confidential Information only in connection with this Agreement and

protect the disclosing party's Confidential Information by using the same degree of care used to protect its own confidential information, but not less than a reasonable degree of care. The receiving party will limit disclosure of the disclosing party's Confidential Information to its and its Affiliates' directors, officers, employees and contractors who are bound to confidentiality obligations at least as protective as the confidentiality provisions in this Agreement and who have a need to know the Confidential Information. The receiving party will not disclose the disclosing party's Confidential Information to any other third party without the disclosing party's consent, except where required to comply with applicable law or a compulsory legal order or process, provided that the receiving party will, if legally permitted, promptly notify the disclosing party. Each party will return or destroy the other party's Confidential Information upon written request from the other party. MongoDB recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

**7. Intellectual Property.** This Agreement does not transfer any right, title or interest in any intellectual property to any party, except as expressly set forth in this Agreement. You are not obligated to provide us with any suggestions or other feedback, but if you do, we may use and modify this feedback without any restriction or payment.

**8. Warranties.** MongoDB represents and warrants that: (a) the Software will perform substantially in accordance with the Documentation; and (b) it will perform Consulting Services and Support in a diligent and workmanlike manner consistent with industry standards. Your exclusive remedy for MongoDB's material breach of warranty is to terminate any affected Order Form in accordance with Section 11 and receive a refund of any prepaid fees for unused Subscriptions. Except as stated in this Section, we provide the Software, Consulting Services and Support on an "AS-IS" basis. To the fullest extent permitted by law, MongoDB disclaims and this Agreement excludes any implied or statutory warranty, including any warranty of title, non-infringement, merchantability or fitness for a particular purpose.

**9. Limitation of Liability.**

(a) Neither party will be liable to the other party for any incidental or consequential damages, including lost profits or business opportunities, or any special or punitive damages.

(b) Except as set forth in Section 9(c) and 9(d), each party's cumulative liability will not exceed the total fees payable to MongoDB by Customer under this Agreement during the 12-month period before the event giving rise to the liability.

(c) Each party's cumulative liability under Section 10 will not exceed \$3,000,000.

(d) Nothing in this Agreement limits either party's liability for: (i) fraud or fraudulent misrepresentation; (ii) death or personal injury caused by negligence, gross negligence or intentional misconduct; (iii) Customer's payment obligations; or (iv) any liability that cannot legally be limited.

#### **10. Indemnification.**

(a) Reserved |

(b) **MongoDB Indemnification.** If a third party asserts a claim against Customer that the Software infringes a third party's intellectual property right or any Deliverable infringes a third party's copyright (a "**Claim Against You**"), MongoDB will have the right to intervene defend Customer against the Claim Against You at MongoDB's expense and indemnify Customer from any damages, reasonable legal fees and costs finally awarded against Customer to the extent resulting from the Claim Against You or for amounts paid by Customer to settle the Claim Against You. MongoDB will not be obligated to defend or indemnify Customer if the Claim Against You is based on: (i) combination of the Software with other software, content, data or business process not contemplated by the Documentation; (ii) use of any older release of the Software when use of a newer version would have avoided the alleged or actual infringement; (iii) any modification of the Software made by anyone other than MongoDB; or (iv) MongoDB's compliance with any materials, designs, specifications or instructions provided by Customer. MongoDB recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

(c) **Infringement Remedies.** In addition to MongoDB's indemnity obligations, if the Software or any Deliverable becomes, or in MongoDB's opinion is likely to become, the subject of an infringement claim, MongoDB may at its option and expense and as Customer's sole and exclusive remedy: (i) procure for Customer the right to make continued use of the Software or Deliverable; (ii) replace or modify the Software or Deliverable so that it becomes non-infringing; or (iii) terminate Customer's license to the Software or Deliverable and refund any prepaid fees for unused Subscriptions.

(d) **Indemnification Procedures.** Each party will provide the other with prompt notice of any claim. A party's failure to provide prompt notice to the other party relieves the party of its obligation to defend and indemnify the other party only to the extent that the failure to provide notice materially harms the party's ability to defend the claim. The indemnifying

party will have sole control of the defense of the claim, including any settlement. The indemnified party will provide the indemnifying party with reasonable cooperation in connection with the defense of the claim, and may participate in the defense at its own expense. This Section 10 sets forth each party's exclusive remedy for any third party infringement claim.

**11. Term and Termination.** The term of this Agreement commences when you agree to an Order Form and will remain in effect until terminated in accordance with this Agreement. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, MongoDB shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of an Order Form or this Agreement, you will remove the Software from all Servers covered by the terminated Subscriptions. Provisions intended by their nature to survive termination of this Agreement survive termination. During the term of this Agreement and one year following termination, we may inspect your records relating to your use of the Software or Consulting Services for the purposes of verifying compliance with this Agreement.

**12. General.** Notices under this Agreement will be in writing and effective on the delivery date. The parties will deliver notices by (a) email, in the case of MongoDB to [legal@mongodb.com](mailto:legal@mongodb.com) and, in the case of Customer, to the email address set forth on your most recent Order Form or (b) personal delivery or courier to the address of the other party set forth on Customer's most recent Order Form. **The Federal law of the United States governs this Agreement, excluding any applicable conflict of laws rules or principles.** This Agreement does not create a partnership, agency relationship, or joint venture between the parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. Unless you tell us otherwise in writing, we may refer to our relationship with you as a customer. Any assignment of this Agreement by you without our prior written consent will be null and void **If any provision of this Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to effect the parties' intention and the remaining provisions will not be affected.** The parties may amend this Agreement only by a written amendment signed by both parties. This Agreement incorporates any attached addenda, exhibits, and any Order Form, and comprises the parties' entire agreement relating to the subject matter of this Agreement. Neither party has entered into this Agreement in reliance on any representations or warranties other than those expressly set forth in this Agreement or in an applicable Order Form. If any conflict exists between the provisions in this Agreement and any Order Form, the Order Form controls,

and if any conflict exists between this Agreement and any addenda, exhibit or other agreement, this Agreement controls. A purchase order is for convenience only and any terms that govern the purchase order are of no effect. Customer's purchase of any Subscription is not contingent on, and Customer has not relied on, the delivery of any future functionality, regardless of any communication about our products. In accordance with GSAR 552.212-4(f), Neither party will be liable for failures or delays in performance due to causes beyond its reasonable control.

# MongoDB Data Processing Agreement

Last updated: September 16, 2022.

This Data Processing Agreement (“DPA”) is incorporated into and forms a part of the Cloud Subscription Agreement, Cloud Terms of Service, or other applicable service or subscription agreement between you and MongoDB with respect to your use of the Cloud Services (“MongoDB Agreement”). This DPA sets out data protection requirements with respect to the processing of Customer Personal Data (as defined below) that is collected, stored, or otherwise processed by MongoDB for the purpose of providing the Cloud Services. This DPA is effective on the effective date of the MongoDB Agreement, unless this DPA is separately executed in which case it is effective on the date of the last signature.

If the Customer is an Ordering Activity under GSA Schedule Contracts, it shall only be required to comply with the Federal law of the United States and expressly does not agree to comply with any provision of this Data Processing Agreement, EU Law, or law of an EU Member State that is inconsistent with the Federal law of the United States.

## 1. Definitions.

The following terms have the following meanings when used in this DPA. Any capitalized terms that are not defined in this DPA have the meaning provided in your MongoDB Agreement.

“Customer,” “you” and “your” means the organization that agrees to an Order Form, or uses the Cloud Services subject to the relevant MongoDB Agreement.

“Customer Personal Data” means any personal data that Customer uploads into the Cloud Services that is processed by MongoDB.

“Data Protection Law” means, to the extent applicable, (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (“EU GDPR”); (ii) the Data Protection Act 2018 and EU GDPR as saved into United Kingdom law by virtue of Section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (“UK GDPR”); (iii) the EU e-Privacy Directive



(Directive 2002/58/EC); (iv) the Swiss Federal Act on Data Protection (“FADP”); (v) the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (Cal. Civ. Code §§ 1798.100 to 1798.199.100), together with the CCPA Regulations (Cal. Code Regs. tit. 11, §§ 7000 to 7102) which may be amended from time to time (“CCPA”); and (vi) any other data protection legislation applicable to the respective party in its role in the processing of Customer Personal Data under the MongoDB Agreement.

“Data Subject Request” has the meaning given to it in Section 5.1.

“EEA” means the European Economic Area.

“Subprocessor” means any third-party data processor engaged by MongoDB to process Customer Personal Data.

“Technical and Organizational Security Measures” has the meaning given to it in Section 3.2.

The terms “controller,” “data subject,” “personal data,” “personal data breach,” “processor,” “processing” and “supervisory authority” have the meanings set forth in the EU GDPR.

## 2. Data Processing.

**2.1. Scope and Roles.** This DPA applies when MongoDB processes Customer Personal Data in the course of providing the Cloud Services. In this context, MongoDB is a “processor” to Customer, who may act as either a “controller” or “processor” with respect to Customer Personal Data.

### 2.2. Details of the Processing.

**2.2.1. Subject Matter.** The subject matter of the data processing under this DPA is Customer Personal Data.

**2.2.2. Duration.** The duration of the data processing under this DPA is until the expiration or termination of the MongoDB Agreement in accordance with its terms.

**2.2.3. Nature and Purpose.** The purpose of the data processing under this DPA is the provision of the Cloud Services to Customer in accordance with the MongoDB Agreement.

**2.2.4. Types of Customer Personal Data.** The types of Customer Personal Data processed under this DPA include any Customer Personal Data uploaded to the Cloud Services by Customer.

**2.2.5. Categories of Data Subjects.** The data subjects may include Customer's customers, employees, suppliers, and end users, or any other individual whose personal data Customer uploads to the Cloud Services.

**2.3. Compliance with Laws.** Each party will comply with all applicable Data Protection Law, including the EU GDPR, in relation to the processing of Customer Personal Data.

**2.4. MongoDB's Processing.** MongoDB will process Customer Personal Data only for the purposes of: (i) provisioning the Cloud Services, (ii) processing initiated by Customer in its use of the Cloud Services, and (iii) processing in accordance with your MongoDB Agreement, this DPA, and your other reasonable documented instructions that are consistent with the terms of your MongoDB Agreement. Any other processing will require prior written agreement between the parties.

**2.5. Customer Obligations.** Customer acknowledges that it controls the nature and contents of the Customer Personal Data. Customer will ensure that it has obtained all necessary and appropriate consents from and provided notices to data subjects where required by Data Protection Law to enable the lawful transfer of any Customer Personal Data to MongoDB for the duration and purposes of this DPA and the MongoDB Agreement.

### **3. Security.**

**3.1. Confidentiality of Personnel.** MongoDB will ensure that any of our personnel and any subcontractors who have access to Customer Personal Data are under an appropriate obligation of confidentiality.

**3.2. Security Measures.** We will implement appropriate technical and organizational security measures to ensure a level of security appropriate to the risks that are presented by the processing of Customer Personal Data. The current technical and organizational security measures are described at <https://www.mongodb.com/technical-and->

[organizational-security-measures](#) (“Technical and Organizational Security Measures”).

**3.3. Optional Security Controls.** MongoDB makes available a number of security controls, features, and functionalities that Customer may elect to use, as described in the Technical and Organizational Security Measures and our Documentation. Customer is responsible for implementing those measures to ensure a level of security appropriate to the Customer Personal Data.

**3.4. Breach Notification.** We will notify you without undue delay if we become aware of a personal data breach affecting Customer Personal Data.

#### 4. Subprocessors.

**4.1. Authorized Subprocessors.** You acknowledge and agree that we may retain our affiliates and other third parties to further process Customer Personal Data on your behalf as Subprocessors in connection with the provision of the Cloud Services. We maintain a current list of our Subprocessors

at: <https://www.mongodb.com/cloud/trust/compliance/subprocessors> which we will update at least 30 days before the addition or replacement of any Subprocessor. You may also register to receive email notifications of any change to our list of Subprocessors.

**4.2. Objections to Subprocessors.** In the event you have a reasonable objection to any new Subprocessor, either (A) we will instruct such Subprocessor not to process Customer Personal Data on your behalf and, if possible, continue to provide the Cloud Services in accordance with the terms of the MongoDB Agreement and any applicable Order Form, or (B) if we cannot provide the Cloud Services without the use of such Subprocessor, you may, as your sole and exclusive remedy, terminate this Agreement and any applicable Order Form and receive a refund of any prepaid fees for unused Subscriptions.

**4.3 Subprocessor Obligations.** MongoDB will impose on each Subprocessor the same data protection obligations as are imposed on us under this DPA. We will be liable to you for the performance of the Subprocessors' obligations to the extent required by Data Protection Law.

#### 5. Data Subject Requests.

**5.1.** To assist with your obligations to respond to requests from data subjects, the Cloud Services provide Customer with the ability to retrieve, correct, or delete Customer

Personal Data. Customer may use these controls to assist it in connection with its obligations under Data Protection Law, including its obligations related to any request from a data subject to exercise their rights under Data Protection Law (each, a “Data Subject Request”).

5.2. If a data subject contacts MongoDB with a Data Subject Request that identifies Customer, to the extent legally permitted, we will promptly notify Customer. Solely to the extent that Customer is unable to access Customer Personal Data itself, and MongoDB is legally permitted to do so, we will provide commercially reasonable assistance to Customer in responding to the Data Subject Request. To the extent legally permitted, Customer will be responsible for any costs arising from MongoDB’s provision of such assistance, including any fees associated with the provision of additional functionality.

## 6. Requests for Customer Personal Data.

6.1. If we receive a valid and binding legal order (“Request”) from any governmental body (“Requesting Party”) for disclosure of Customer Personal Data, we will use commercially reasonable efforts to redirect the Requesting Party to seek that Customer Personal Data directly from Customer.

6.2. If, despite our efforts, we are compelled to disclose Customer Personal Data to a Requesting Party, we will:

(a) if legally permitted, promptly notify Customer of the Request to allow Customer to seek a protective order or other appropriate remedy. If we are prohibited from notifying Customer, we will use commercially reasonable efforts to obtain a waiver of that prohibition;

(b) challenge any over-broad or inappropriate Request (including Requests that conflict with the law of the European Union); and

(c) disclose only the minimum amount of Customer Personal Data necessary to satisfy the Request.

7. Cooperation. Taking into account the nature of the processing and the information available to us, at your request and cost, MongoDB will provide reasonable assistance to ensure compliance with the obligations under applicable Data Protection Law with respect to implementing appropriate security measures, personal data breach notifications, impact

assessments and consultations with supervisory authorities or regulators, in each case solely related to processing of Customer Personal Data by MongoDB.

## 8. Customer Audit Rights.

8.1. Upon Customer's request, and subject to the confidentiality obligations set forth in your MongoDB Agreement, MongoDB will make available to Customer (or Customer's independent, third-party auditor) information regarding MongoDB's compliance with the security obligations set forth in this DPA in the form of third-party certifications and audits.

8.2. If that information is not sufficient to demonstrate our compliance with the security obligations in the DPA, you may contact MongoDB in accordance with the notice provision of your MongoDB Agreement to request an on-site audit of MongoDB's procedures relevant to the protection of Customer Personal Data, but only to the extent required under applicable Data Protection Law. Customer will reimburse MongoDB for its reasonable costs associated with any such on-site audit. Before the commencement of any such on-site audit, Customer and MongoDB will mutually agree upon the scope, timing, and duration of the audit.

8.3. Customer will promptly notify MongoDB with information regarding any non-compliance discovered during the course of an audit, and MongoDB will use commercially reasonable efforts to address any confirmed non-compliance.

## 9. Data Transfers.

9.1. **Data Deployment Locations.** Customer Personal Data will only be hosted in the region(s) that Customer chooses to deploy its database clusters in its configuration of the Cloud Services (the "Deployment Region"). Customer is solely responsible for any transfer of Customer Personal Data caused by Customer's subsequent designation of other Deployment Regions. When required by Data Protection Law, such transfers by Customer will be governed by the transfer mechanisms described in Section 9.3 below.

9.2. **Other Processing Locations.** You may choose to use certain optional features of the Cloud Services that require transfers of Customer Personal Data outside of the EEA, Switzerland or the United Kingdom. When required by Data Protection Law, such transfers will be governed by the provisions of Section 9.3 below.

9.3. **Transfer Mechanism.** Where the transfer of Customer Personal Data is from the EEA, Switzerland or the United Kingdom to a territory which has not been recognized by the relevant data protection authorities as providing an adequate level of protection for personal data according to Data Protection Law, MongoDB agrees to process that Customer Personal Data in compliance with the provisions set out in Schedule 1 below, which forms an integral part of this DPA.

10. **Return or Deletion of Data.** Customer may retrieve or delete all Customer Personal Data upon expiration or termination of the MongoDB Agreement. Upon termination of your MongoDB Agreement or upon your request, MongoDB will delete any Customer Personal Data not deleted by Customer, unless we are legally required to store the Customer Personal Data.

11. **CCPA Obligations.** For purposes of this Section 11, Customer Personal Data shall include “personal information” (as that term is defined under CCPA) that Customer uploads into the Cloud Services that is processed by MongoDB. MongoDB is a “service provider” as defined in CCPA.

11.1. MongoDB will not:

11.1.1. retain, use, or disclose Customer Personal Data for any purpose other than providing the Cloud Services;

11.1.2. retain, use, or disclose Customer Personal Data outside of the direct business relationship between MongoDB and Customer;

11.1.3. sell or share Customer Personal Data (as the terms “sell” and “share” are defined in CCPA); or

11.1.4. combine Customer Personal Data with personal information that MongoDB has received from another MongoDB customer, except as permitted under CCPA.

11.2. We will notify you if we determine that we can no longer comply with our obligations as a service provider under CCPA.

11.3. You have the right, upon notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of personal information that is protected under CCPA.

#### SCHEDULE 1 CROSS BORDER DATA TRANSFERS

## 1. Definitions.

“Standard Contractual Clauses” means, as the circumstances may require, the applicable module(s) of the Standard Contractual Clauses approved by the European Commission in decision 2021/914, or any subsequent versions of the Standard Contractual Clauses which may be adopted by the European Commission from time to time. Upon the effective date of adoption for any revised Standard Contractual Clauses by the European Commission, all references in this DPA to the “Standard Contractual Clauses” shall refer to that latest version thereof.

“Alternative Transfer Mechanism” means a mechanism, if any, other than the Standard Contractual Clauses, that enables the lawful cross-border transfer of Customer Personal Data to a territory which has not been recognized by the relevant data protection authorities as providing an adequate level of protection for Customer Personal Data in accordance with Data Protection Law, for example, any replacement international instruments for the invalidated EU-U.S. and Switzerland-U.S. Privacy Shield Frameworks or Binding Corporate Rules under Article 47 of EU GDPR.

2. Order of Precedence for Transfer Mechanisms. If MongoDB adopts an Alternative Transfer Mechanism for any transfers that are subject to Section 9.3 of the DPA, then MongoDB will inform Customer of the relevant Alternative Transfer Mechanism and ensure that such transfers are made in accordance with it; and/or if MongoDB has not adopted, or informs Customer that MongoDB is no longer adopting, an Alternative Transfer Mechanism for such transfers, then the Standard Contractual Clauses shall apply in accordance with Section 3 below.

## 3. Incorporation of the Standard Contractual Clauses.

3.1. When the Standard Contractual Clauses are the applicable transfer mechanism in accordance with Section 2 above, the parties agree that:

3.1.1 Clause 7 will not apply.

3.1.2 in Clause 9(a), Option 2 will apply, and the time period for prior notice of Subprocessor changes will be as set forth in Section 4.1 of the DPA.

3.1.3 in Clause 11(a), the optional language will not apply.

3.1.4 in Clause 17, Option 1 will apply, and the Standard Contractual Clauses will be governed by the law of the Republic of Ireland.

3.1.5 in Clause 18(b), disputes will be resolved before the courts of the Republic of Ireland.

3.2. For purposes of Annex I, Part A of the Standard Contractual Clauses (List of Parties):

3.2.1 Data Exporter: Customer.

- Contact Details: Customer's account owner email address, or to the email address(es) for which Customer elects to receive legal communications.
- Data Exporter Role: Data Exporter's role is outlined in Section 2 of the DPA.
- Signature & Date: By entering into the MongoDB Agreement, Data Exporter is deemed to have signed the Standard Contractual Clauses, including their Annexes and configured according to Section 3 of this Schedule I to the DPA, as of the effective date of the MongoDB Agreement.

3.2.2 Data Importer: MongoDB, Inc., on its own behalf and on behalf of its non-EEA Affiliates.

- Contact Details: MongoDB's DPO at [privacy@mongodb.com](mailto:privacy@mongodb.com).
- Data Importer Role: Data Importer's role is outlined in Section 2 of the DPA.
- Signature & Date: By entering into the MongoDB Agreement, Data Importer is deemed to have signed the Standard Contractual Clauses, including their Annexes and configured



according to Section 3 of this Schedule 1 to the DPA, as of the effective date of the MongoDB Agreement.

3.3. For purposes of Annex I, Part B of the Standard Contractual Clauses (Description of Transfer):

3.3.1 The categories of data subjects are described in Section 2.2.5 of the DPA.

3.3.2 The forms of Customer Personal Data transferred are described in Section 2.2.4 of the DPA.

3.3.3 The frequency of the transfer is on a continuous basis for the duration of the MongoDB Agreement.

3.3.4 The nature and purpose of the processing is described in Section 2.2.3 of the DPA.

3.3.5 The period of retention of Customer Personal Data in relation to the processing will end upon termination of the MongoDB Agreement.

3.3.6 For transfers to Subprocessors, the subject matter and nature of the processing is described at:  
<https://www.mongodb.com/cloud/trust/compliance/subprocessors>.  
The duration of processing by Subprocessors is the same as by Data Importer.

3.4. For purposes of Annex I, Part C of the Standard Contractual Clauses (Competent Supervisory Authority), the competent supervisory authority/ies shall be determined in accordance with EU GDPR and Clause 13 of the Standard Contractual Clauses.

3.5. Sections 3 and 4.3 of the DPA contain the information required under Annex II of the Standard Contractual Clauses (Technical and Organizational Measures).

3.6. In addition to the above stipulations, each of the following forms part of the Standard Contractual Clauses and sets out the parties' understanding of their respective obligations under the Standard Contractual Clauses:

3.6.1 Clause 8.9 of the Standard Contractual Clauses: Audit. Data Exporter acknowledges and agrees that it exercises its audit right(s) under Clause 8.9 by instructing Data Importer to comply with the audit measures described in Section 8 (Customer Audit Rights) of the DPA.

3.6.2 Clause 9(c) of the Standard Contractual Clauses: Disclosure of Subprocessor agreements. The parties acknowledge that, pursuant to subprocessor confidentiality restrictions, Data Importer may be restricted from disclosing onward subprocessor agreements to Data Exporter. Even where Data Importer cannot disclose a subprocessor agreement to Data Exporter, the parties agree that, upon the request of Data Exporter, Data Importer shall (on a confidential basis) provide all information it reasonably can in connection with such subprocessing agreement to Data Exporter.

3.6.3 Clause 12 of the Standard Contractual Clauses: Liability. To the greatest extent permitted under Data Protection Law, any claims brought under the Standard Contractual Clauses will be subject to any aggregate limitations on liability set out in the MongoDB Agreement.

#### 4. Transfers of Customer Personal Data Protected by FADP.

4.1. With respect to transfers of Customer Personal Data protected by FADP, the Standard Contractual Clauses will apply in accordance with Sections 2 and 3 above, with the following modifications:

4.1.1 any references in the Standard Contractual Clauses to "Directive 95/46/EC" or "Regulation (EU) 2016/679" shall be interpreted as references to FADP;

4.1.2 references to "EU", "Union", "Member State" and "Member State law" shall be interpreted as references to Switzerland and Swiss law, as the case may be; and

4.1.3 references to the "competent supervisory authority" and "competent courts" shall be interpreted as references to the Swiss Federal Data Protection and Information Commissioner and competent courts in Switzerland.

## 5. Transfers of Customer Personal Data Protected by UK GDPR.

5.1. With respect to transfers of Customer Personal Data protected by UK GDPR, the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses issued under S119A(1) Data Protection Act 2018 ("UK Addendum"), shall apply and be incorporated by reference into this DPA, with Part 1: Tables completed in accordance with the applicable stipulations in Section 3 of this Schedule 1. Either data exporter or data importer may terminate the UK Addendum pursuant to Section 19 of the UK Addendum if, after a good faith effort by the parties to amend the DPA to account for the approved changes and any reasonable clarifications to the UK Addendum, the parties are unable to come to agreement. To the extent of any conflict between Section 3 of this Schedule 1 and any mandatory clauses of the UK Addendum, the UK Addendum shall govern to the extent UK GDPR applies to the transfer.



## CLOUD SUBSCRIPTION AGREEMENT

This Cloud Subscription Agreement (this “**Agreement**”) is entered into between you and MongoDB, Inc. If you represent an organization, you represent and warrant that you are authorized to agree to this Agreement on behalf of your organization.

**1. Definitions.** The following terms have the following meanings:

“**Affiliate**” means an organization that controls, is controlled by, or is under common control with, a party, where “control” means direct or indirect ownership of more than 50% of the voting interests of the organization.

“**Cloud Services**” means MongoDB Atlas or any other cloud service included in your Subscription.

“**Confidential Information**” means information a party designates as confidential or reasonably considers as confidential. “Confidential Information” excludes information that is (a) or becomes publicly available without breach of this Agreement by the recipient, (b) received from a third party without a duty of confidentiality, (c) independently developed by the receiving party without breaching this Agreement, or (d) rightfully known or lawfully in the possession of the receiving party prior to disclosure from the other party.

“**Consulting Services**” means the consulting or professional services included in your Subscription.

“**Customer**,” “**you**” and “**your**” means the organization that agrees to an Order Form.

“**Deliverable**” means a work provided to you as a part of the Consulting Services, including any report.

“**Documentation**” means the instructions, specifications and information regarding the Cloud Services available at <https://docs.mongodb.com/>.

“**MongoDB**,” “**we**,” “**our**” and “**us**” means the MongoDB company that agrees to an Order Form.

**“Order Form”** means an ordering document for Subscriptions signed by both parties that refers to this Agreement, or submitted by you through an authorized third-party platform.

**“Subscription”** means a subscription for our Cloud Services, Support or Consulting Services set forth in an Order Form.

**“Support”** means support, if any, included in a Subscription.

## 2. Cloud Services.

**a) Generally.** You may access and use our Cloud Services in accordance with this Agreement. The service level agreements we currently offer with respect to MongoDB Cloud Services are located at: <https://www.mongodb.com/cloud/sla>. You will comply with all laws, rules, and regulations applicable to the use of the Cloud Services and any additional feature or service you use. Your Affiliates may purchase Subscriptions directly from us or our Affiliates by signing an Order Form, and you may allow an Affiliate to use your Subscriptions as long as you are responsible for the Affiliate’s compliance with this Agreement.

**(b) Registration and your Account.** To register to use the Cloud Services, you must create a username and password and provide us with the information requested in the registration process. You will provide complete and accurate information during the registration process and will update your information to ensure it remains accurate.

**(c) Beta Offerings.** Some Cloud Services may be in preview, testing, or beta phase (each, a **“Beta Offering”**), for the purpose of evaluating performance, identifying defects and obtaining feedback. MongoDB will not be liable for any damages in connection with your use of any Beta Offering. You are not required to use any Beta Offering, and we have no obligation to release a final version of any Beta Offering.

## 3. Services

**(a) Consulting Services.** You will provide MongoDB with reasonable assistance and information to facilitate scheduling and performance of the Consulting Services. You will also appoint an engagement manager to help ensure effective delivery of the Consulting Services. Consulting Services and any Deliverables are accepted when delivered unless otherwise set forth in an Order Form. We may engage qualified subcontractors to provide

the Consulting Services, and we are responsible for any subcontractor's compliance with this Agreement. We grant you a royalty-free, perpetual, nontransferable and nonexclusive license to use and reproduce any Deliverables for your internal business purposes.

**(b) Support.** We will provide you with Support in accordance with the applicable support policy on our website, attached hereto and currently available at:

<https://www.mongodb.com/support-policy>. While we may modify our support policy from time to time, we will not modify it in a way that materially and adversely affects your Support. You may only use Support in connection with the Subscription that includes that Support.

**4. Your Responsibilities.** As a condition to your use of the Cloud Services you will not, and will not allow any third party to: (a) modify or create derivative works of the Cloud Services or any software included in the Cloud Services; (b) reverse engineer, disassemble, or decompile the Cloud Services or apply any process or procedure to derive the source code of any software included in the Cloud Services; (c) access or use the Cloud Services in a way intended to avoid incurring fees or exceeding usage limits or quotas; (d) resell or sublicense the Cloud Services; (e) use the Cloud Services in connection with any derivative work of the MongoDB database; (f) attempt to disable or circumvent any security mechanisms used by the Cloud Services; (g) use the Cloud Services in a way that poses a risk to the availability, functionality or security of the Cloud Services; or (h) use the Cloud Services unlawfully.

**5. Payment and Taxes.** You will pay undisputed fees as set forth on and in accordance with an Order Form in accordance with the GSA Schedule Pricelist. We shall state separately on invoices taxes excluded from the fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). Nothing in this Agreement requires either party to pay any income taxes or similar charges of the other party. If applicable law requires you to withhold any amount from your payment, you will provide us with copies of documents related to your withholding upon our request.

## **6. Confidentiality and Data Processing.**

**(a) Confidentiality.** This Agreement supersedes any applicable non-disclosure agreement between the parties with respect to your Subscriptions. The receiving party will use the disclosing party's Confidential Information only in connection with this Agreement and protect the disclosing party's Confidential Information by using the same degree of care used to protect its own similar confidential information, but not less than a reasonable degree of care. The receiving party will limit disclosure of the disclosing party's Confidential Information to its and its Affiliates' directors, officers, agents, representatives, employees and

contractors who are bound to confidentiality obligations at least as protective as the confidentiality provisions in this Agreement and who have a need to know the Confidential Information. The receiving party will not disclose the disclosing party's Confidential Information to any other third party without the disclosing party's consent, except where required to comply with applicable law or a legal order or process, provided that the receiving party will, if legally permitted, promptly notify the disclosing party. Each party will return or destroy the other party's Confidential Information upon written request from the other party. We recognize that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor

**(b) Your Data.** You will ensure that your data, and your use of it, complies with this Agreement and any applicable law. You will not store or process protected health information using the Cloud Services unless you sign a Business Associate Agreement with us. If you include payment cardholder information in your use of the Cloud Services, MongoDB will maintain it in accordance with all applicable Payment Card Industry Data Security Standard requirements. We may pause any M0 (Free Tier) MongoDB Atlas cluster if you do not use it for 30 days, after which we will use commercially reasonable efforts to allow you to resume the cluster by request to us.

**(c) Data Processing.** The parties will comply with the MongoDB Data Processing Agreement (DPA) attached hereto and available at [www.mongodb.com/legal/dpa](https://www.mongodb.com/legal/dpa), which is incorporated into this Agreement.

**(d) Security.** Each party has obligations with respect to the security of the Cloud Services. We will implement and maintain appropriate technical and organizational security measures. The current technical and organizational security measures are described at <https://www.mongodb.com/technical-and-organizational-security-measures>. You are responsible for properly configuring and using the Cloud Services and taking your own steps to maintain appropriate security and backup of your data. You will not disclose your user credentials to any unauthorized persons. You are responsible for all activities in your account, regardless of whether undertaken by you, your employees or a third party (including contractors or agents). You will contact us immediately if you believe unauthorized activity has occurred in your account or if your account information is lost or stolen.

## 7. Intellectual Property.

**(a) Your Data.** You represent and warrant to us that: (i) you have all rights in your data necessary to grant the rights contemplated by this Agreement; and (ii) none of your data violates this Agreement, any applicable law or any third party's intellectual property or other right.

**(b) No Other Rights.** This Agreement does not transfer any right, title or interest in any intellectual property to any party, except as expressly set forth in this Agreement. You are not obligated to provide us with any suggestions or other feedback about the Cloud Services or otherwise, but if you do, we may use and modify this feedback without any restriction or payment.

**8. Warranties.** MongoDB represents and warrants that (i) its provision of the Cloud Services, Consulting Services and Support complies with applicable law; (ii) the Cloud Services will perform substantially in accordance with the Documentation; and (iii) it will perform Consulting Services and Support in a diligent and workmanlike manner consistent with industry standards. Your exclusive remedy for MongoDB's material breach of warranty is to terminate any affected Order Form in accordance with Section 11 and receive a refund of any prepaid fees for unused Subscriptions. Except as stated in this Section, we provide the Cloud Services, Consulting Services and Support on an "AS-IS" basis. To the fullest extent permitted by law, MongoDB disclaims and this Agreement excludes any implied or statutory warranty, including any warranty of title, non-infringement, merchantability or fitness for a particular purpose.

## **9. Limitation of Liability.**

**(a)** Neither party will be liable to the other party for any indirect, incidental or consequential damages, including lost profits or business opportunities, or any special or punitive damages, even if a party has been advised of the possibility of such damages.

**(b)** Except as set forth in Section 9(c), each party's aggregate liability will not exceed the total fees payable to MongoDB by Customer under this Agreement during the 12-month period before the event giving rise to the liability.

**(c)** Nothing in this Agreement limits either party's liability for: (i) fraud or fraudulent misrepresentation; (ii) death or personal injury caused by negligence, gross negligence or intentional misconduct; (iii) Customer's payment obligations; or (iv) any liability that cannot legally be limited.

## **10. Indemnification.**

**(a)Reserved.**



**(b) MongoDB Indemnification.** If a third party asserts a claim against Customer that the Cloud Services infringe a third party's intellectual property right (a **"Claim Against You"**), MongoDB will have the right to intervene to defend Customer against the Claim Against You at MongoDB's expense and indemnify Customer from any damages, reasonable legal fees and costs finally awarded against Customer to the extent resulting from the Claim Against You or for amounts paid by Customer to settle the Claim Against You. MongoDB will not be obligated to defend or indemnify Customer if the Claim Against You is based on any breach of this Agreement by Customer. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**(c) Infringement Remedies.** In addition to MongoDB's indemnity obligations, if the Cloud Services become, or in MongoDB's opinion are likely to become, the subject of an infringement claim, MongoDB may at its option and expense and as Customer's sole and exclusive remedy: (i) procure for Customer the right to make continued use of the Cloud Services; (ii) replace or modify the Cloud Services so that they become non-infringing; or (iii) terminate the Cloud Services and refund any prepaid fees for unused Subscriptions.

**(d) Indemnification Procedures.** Each party will provide the other with prompt notice of any claim. A party's failure to provide prompt notice to the other party relieves the party of its obligation to defend and indemnify the other party only to the extent that the failure to provide notice materially harms the party's ability to defend the claim. The indemnifying party will have sole control of the defense of the claim, including any settlement. The indemnified party will provide the indemnifying party with reasonable cooperation in connection with the defense of the claim, and may participate in the defense at its own expense. This Section 10 sets forth each party's exclusive remedy for any third party infringement claim.

## **11. Term and Termination.**

**(a) Term and Termination.** The term of this Agreement commences when you agree to an Order Form and will remain in effect until terminated in accordance with this Agreement. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, We shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. We may temporarily suspend your access to the Cloud Services immediately if: (i) we reasonably determine that your use of the Cloud Services poses an imminent risk to the availability, functionality or security of the Cloud Services; (ii) we reasonably determine that your use of the Cloud Services may be unlawful; (iii) reserved;

or (iv) reserved. If we suspend your right to access or use any portion or all of the Cloud Services, you remain responsible for all fees and charges you incur during the suspension and you will not be entitled to any credit or refund. We will use commercially reasonable efforts to restore your access to the Cloud Services promptly following resolution of the cause of your suspension. We may suspend or terminate your access to or use of any Beta Offering at any time and for any reason.

**(b) Effect of Termination.** Upon termination of this Agreement: (i) all your rights under this Agreement immediately terminate; and (ii) you remain responsible for all fees and charges you have incurred up to and including the date of termination. You are solely responsible for exporting your data from the Cloud Services within thirty (30) days of the expiration or termination of this Agreement so long as you agree to pay the costs associated with the storage of your data. We have no obligation to continue to store the data contained in backup snapshots or in a MongoDB Atlas cluster that you have terminated or after termination of this Agreement.

**12. General.** Notices under this Agreement will be in writing and effective on the delivery date. We may provide any notice to you under this Agreement by posting a notice on the applicable Cloud Services website or sending a message to the email address associated with your account. Customer will deliver notices by email to [legal@mongodb.com](mailto:legal@mongodb.com). The Federal law of the United States governs this Agreement, excluding any applicable conflict of laws rules or principles. This Agreement does not create a partnership, agency relationship or joint venture between the parties. This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. Unless you tell us otherwise in writing, we may refer to our relationship with you as a customer. Any assignment of this Agreement by you without our prior written consent will be null and void. If any provision of this Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to effect the parties' intention and the remaining provisions will not be affected. The parties may amend this Agreement only by a written amendment signed by both parties. This Agreement incorporates any attached addenda or exhibits, any Order Form and, if applicable, any data processing agreement or Business Associate Agreement, and comprises the parties' entire understanding relating to the subject matter of this Agreement. Neither party has entered into this Agreement in reliance on any representations or warranties other than those expressly set forth in this Agreement or in an applicable Order Form. If any conflict exists between the provisions in this Agreement and any Order Form, the Order Form controls, and if any conflict exists between this Agreement and any addenda, exhibit or other agreement, this Agreement controls. A purchase order is for convenience only and any terms that govern the purchase order are of no effect. Provisions intended by their nature to

survive termination of this Agreement survive termination. Customer's purchase of any Subscription is not contingent on, and Customer has not relied on, the delivery of any future functionality, regardless of any communication about our products. Neither party will be liable for failures or delays in performance due to causes beyond its reasonable control.