ALTINITY.CLOUD TERMS OF SERVICE

These Terms of Service (the "*Terms*") apply to all Altinity.Cloud services provided by Altinity Inc., a Delaware corporation or ("Altinity") or an Altinity Affiliate, to you ("*Customer*" or "*you*"), and are an essential part of the Agreement between Altinity and Customer relating to such services.

The Terms, together with Altinity's other policies and materials referenced in these Terms (e.g., Privacy Policy, Security Policy, DPA, Acceptable Use Policy, and Support Policy), any attached exhibits or appendices, and any statement of work entered into between Altinity and Customer (a "*SOW*"), are referred to collectively as the "*Agreement*").

MODIFICATIONS TO THE AGREEMENT: FROM TIME TO TIME, ALTINITY MAY MODIFY THE AGREEMENT UNLESS OTHERWISE SPECIFIED BY ALTINITY, CHANGES BECOME EFFECTIVE FOR CUSTOMER UPON RENEWAL OF THE THEN CURRENT SUBSCRIPTION TERM (AS DEFINED BELOW) AFTER THE UPDATED VERSION OF THIS AGREEMENT GOES INTO EFFECT. ALTINITY WILL USE REASONABLE EFFORTS TO NOTIFY CUSTOMER OF THE CHANGES THROUGH COMMUNICATIONS VIA CUSTOMER'S SERVICE ACCOUNT, EMAIL OR OTHER MEANS. CUSTOMER MAY BE REQUIRED TO CLICK TO ACCEPT OR OTHERWISE AGREE TO THE MODIFIED AGREEMENT BEFORE RENEWING A SUBSCRIPTION TERM, AND IN ANY EVENT CONTINUED USE OF THE SERVICE AFTER THE UPDATED VERSION OF THIS AGREEMENT GOES INTO EFFECT WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF SUCH UPDATED VERSION. IF CUSTOMER DOES NOT AGREE TO THE CHANGES, CUSTOMER MAY TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 5.2 (TERMINATION).

1. **THE SERVICES**.

1.1.   **Service Description**. Altinity.Cloud is a cloud-based database management platform and data storage service using open source Clickhouse software, which allows customers to store, combine and process structured business data. Customer receives access to one or more software and data environments which store data and have Service computing resources assigned to Customer (each a "*Customer Environment*"). Customer may create one or more data warehouses as desired in each Customer Environment. As used in this Agreement, "*Service*" means the version of the Altinity.Cloud selected by Customer in its SOW, and as further described in the Documentation. "Documentation" means Altinity's technical documentation and usage guides for the Service, as updated by Altinity from time to time, made available at https://altinity.com/legal (or such successor URL as may be designated by Altinity) or through the Service.

1.2.   **Access to the Service**. Customer may access and use the Service and access its Account in accordance with these Terms, and the Documentation. Use of and access to the Service is permitted only by personnel of Customer designated by Customer ("*Users*"). Customer may permit its independent contractors and consultants ("*Contractors*") and Affiliates to serve as Users provided that any use of the Service by each such Contractor or Affiliate is solely for the benefit of Customer. Customer shall be responsible for compliance by each User with all of the terms and conditions of this Agreement. Any data provided by a User that is uploaded to the Service is Customer Data for the purposes of this Agreement.

1.3.   **Contractors and Affiliates**. Customer may permit its independent contractors and consultants ("*Contractors*") and Affiliates to serve as Users, provided (a) Customer remains responsible for compliance by each such Contractor or Affiliate with all of the terms and conditions of this Agreement and (b) any use of the Service.

1.4.   **Sample Data**. Altinity may make available sample data (including from third-party sources) solely for Customer's internal testing, evaluation, and other non-productive use during the applicable Subscription Term ("*Sample Data*"). Customer acknowledges that Sample Data is example data only, which may not be complete, current, or accurate. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SAMPLE DATA IS PROVIDED "AS IS" AND ALTINITY WILL HAVE NO WARRANTY, INDEMNITY OR OTHER OBLIGATIONS WITH RESPECT TO SAMPLE DATA.

1.5.   **General Restrictions**. Customer will not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Service to a third party (except as expressly set forth in Section 1.3 (Contractors and Affiliates)) or in a service bureau or outsourcing offering; (b) use the Service to provide, or incorporate the Service into, any general purpose data warehousing service (or otherwise directly expose the functionality of the Service) for the benefit of a third party; (c) seek to obtain non-public APIs to the Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Altinity); (d) remove or obscure any proprietary or other notices contained in the Service (including any reports or data printed from the Service); (e) use the Service in violation of the Acceptable Use Policy; (f) use any portion of the Service to create a competitive service, product or technology; or (g) access the Service if Customer is a direct competitor of Altinity, except with Altinity's prior written consent. Notwithstanding anything to the contrary in this Agreement, including the DPA or Security Policy, (i) Customer may not conduct any security testing of Altinity or the Service, including but not limited to, penetration testing, and (ii) Customer may only exercise any audit rights through the review of Altinity's applicable third-party certifications and/or audits, subject to reasonable additional security and confidentiality controls.

1.6.   **Beta Release Terms.** Altinity may make available to Customer certain products, features, services, software, regions or cloud providers that are not yet generally available, including such products, features, services, software, regions or cloud providers that are labeled as "pre-release" or "beta" (collectively, "*Beta Releases*"). Customer may access and use Beta Releases solely for its internal evaluation purposes and in accordance with the applicable terms and conditions distributed therewith ("Beta Release Terms"). In the event of any conflict between this Agreement and the Beta T, the Preview Terms shall govern and control solely with respect to the Previews.

1.7   **Altinity.Cloud Anywhere**. "Altinity.Cloud Anywhere" is a version of Altinity.Cloud which provisions and administers ClickHouse clusters and related components in data storage provided and managed by Customer, rather than by Altinity (each an "*Anywhere Environment*"). Altinity.Cloud management of data in an Anywhere Environment is enabled by connectivity software provided by Altinity that links Altinity.Cloud to the Customer's Anywhere Environment (the "*Connectivity Software*"). Notwithstanding anything to the contrary in this Agreement, if Customer elects to utilize Altinity.Cloud Anywhere, the following terms and conditions, together with any additional terms provided in the SOW, shall apply:

(a)   Anywhere **Environment**. Customer is solely responsible for operation and maintenance of its Anywhere Environment(s), including, without limitation, implementation of security and management policies that Customer deems appropriate to ensure availability of the Anywhere Environment, and to protect its Customer Data.

(b)   **Resource Costs**. Customer is solely responsible for all costs of resources relating to its Anywhere Environment(s), including any software installed or managed by Altinity.Cloud Anywhere.

(c)   **Connectivity**. Customer is responsible for installing the Connectivity Software in the Anywhere Environment in accordance with documentation and recommendations provided by Altinity. Customer shall provide Altinity with access to the Anywhere Environment to enable Altinity to provide the Altinity.Cloud Anywhere services. Customer understands and agrees that Altinity SLAs only apply when such Connectivity Software is properly installed, and the Anywhere Environment properly maintained. Altinity SLAs do not apply if Connectivity Software is incorrectly installed or disabled by Customer, or to the extent that services are interrupted or impaired as a result of issues with or in the Anywhere Environment. Customer further agrees that Customer will manage ClickHouse clusters and data in the Anywhere Environment using only the Altinity.Cloud platform.

(d)   **Other Software**. Customer is solely responsible for management of all third party software running in the Anywhere Environment (other than Clickhouse cluster software). Altinity is not responsible or liable for use, availability, costs, security, or any other aspect of such third party software.

(e)   Data. Customer shall retain ownership of all Customer Data stored or processed in Customer's Anywhere Environment, including data managed by Altinity.Cloud Anywhere. Such data will remain the property of Customer, during and after termination or expiration of the Subscription Term. All Clickhouse clusters resident in the Anywhere Environment

will be deemed licensed by Customer. Upon the termination of expiration of this Agreement, all such data and ClickHouse components shall remain in Customer's Anywhere Environment; all Connectivity Software will be removed from the Anywhere Environment, as provided in Section 5.2, below.

1.7   **Altinity Affiliates**. Services may be provided by Altinity, or an Altinity Affiliate. For purposes of the Agreement, "*Affiliate*" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

1.8   **Support**. Altinity's current support policies and service level agreement relating to the Services are described in the Service Level Agreement and Support Policy ("*SLA")* located at https://altinity.com/legal (or such successor URL as may be designated by Altinity). Altinity will provide to Customer support and service in accordance with the Support Policy applicable to the Services for which Customer has subscribed. If applicable, the Support Policy is incorporated into this Agreement by reference.

2.   SUBSCRIPTION TERM. The Service is made available to Customer on a subscription basis for a one-month subscription term ("*Subscription Term*") unless another term is provided in the SOW. The Subscription Term will automatically renew for additional one-month periods until terminated in accordance with Section 5 (Term and Termination).

3.   CUSTOMER DATA.

3.1.   **Rights in Customer Data**. "*Customer Data*" means any data or data files of any type that are uploaded by or on behalf of Customer to the Service for storage in a data repository maintained in either a Customer Environment, or a Customer's Anywhere Environment. As between the parties, Customer or its licensors will retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data and any modifications made thereto in the course of the operation of the Service as provided by Altinity. Subject to the terms of this Agreement, Customer hereby grants to Altinity a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Services to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law.

3.2.   **Uploads of Customer Data.** Customer will be responsible for providing all Customer Data to Altinity and will provide such Customer Data in a format consistent with the requirements set forth in the Documentation (or as otherwise specified by Altinity). Errors in loading Customer Data into the applicable Service due to defective media, erroneous data or failure to meet such requirements may cause Customer Data to be rejected by the Service and Altinity will have no responsibility for any related impact on Customer's ability to access or use the Service.

3.3.   **Customer Obligations.**

        (a)   **In General**. Customer will ensure that Customer's use of the Service and all Customer Data is at all times compliant with Customer's privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Altinity that Customer has sufficient rights in the Customer Data to grant the rights granted to Altinity in Section 2.1 and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

        (b)   **HIPAA Data**. *"HIPAA Data"* means any patient, medical or other protected health information regulated by the US Health Insurance Portability and Accountability Act (as amended and supplemented) or any similar federal or state laws, rules or regulations. Customer agrees not to upload to the Service any HIPAA data.

(c) **User ID and Password Protection**. Customer will require that all permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Altinity will not have any liability under this Agreement for actions taken using Customer's user IDs and passwords, including any unauthorized use or access caused by misuse or misappropriation of such user IDs and passwords. Customer will be responsible for restricting access by any User who is no longer authorized to access the Service.

3.4 **Data Privacy**. Each party shall comply with the Customer Data Processing Addendum located at https://altinity.com/legal (or such successor URL as may be designated by Altinity) ("*DPA*"), which is incorporated herein by this reference. By each party's acceptance and agreement to the terms and conditions of this Agreement, each party is deemed to have signed the DPA, including the Model Clauses as "Data exporter" in the case of Customer, and as "Data importer" in the case of Altinity.

4. **SECURITY**. Altinity will use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration, or disclosure of Customer Data in accordance with the Altinity Security Policy White Paper ("*Security Policy*") available by request from Altinity, as updated as set forth in Section 13.1 (Entire Agreement), and which is incorporated herein by this reference.

5. **TERM AND TERMINATION.**

5.1. **Term**. This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with this Agreement. If there is no SOW in effect with a duration longer than the monthly Subscription Term established in Section 2, either party may terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other party, subject to applicable data retrieval rights during the Transition Period (as provided in Section 5.4). Customer may give notice of termination by emailing Altinity at info@altinity.com. Altinity may give notice of termination by emailing the email address provided by Customer. Unpaid trials may be terminated by Altinity immediately, upon notice to Customer.

5.2. **Termination for Cause**. In addition to the termination rights established in Section 5.1, either party may terminate this Agreement (including all related SOWs) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay Fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, , or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within sixty (60) days.

5.3. **Effect of Termination**. For any termination of this Agreement by Customer for cause in accordance with this Section 5.2, or termination of this Agreement by Altinity without cause in accordance with Section 5.1, Customer shall be entitled to a refund of any unused Fees Customer has pre-paid for the Service purchased hereunder. Except to the extent expressly set forth in Section 5.4 (Transition Period), upon any expiration or termination of this Agreement, Customer will immediately cease use of and access to the applicable Service (including any related Altinity Technology) and delete the Service passwords or access codes, and any other Altinity Confidential Information in its possession. Unless resident in a Customer Anywhere Environment, following termination (or, if applicable, the Transition Period) Customer will have no further access to any Customer Data. Promptly following the expiration or termination of this Agreement (or, if applicable, the Transition Period) Altinity will delete all Customer Data hosted by Altinity in a Customer Environment. Altinity will not delete or other modify Customer's data residing in an Anywhere Environment, and Anywhere Environments which remain at all times under Customer control, during and after the Subscription Term. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. Further, upon termination, Altinity will charge Customer's Payment Method for Customer's use of the Service during the current month, if not already paid.

5.4. **Transition Period**. If this Agreement is not terminated by Altinity for Customer's breach, then following the termination of the Agreement, there shall be a thirty (30)-day Transition Period during which (i) Customer may contact Altinity regarding retrieval of Customer Data from the Customer Environment. Upon Customer's written request, Altinity shall allow Customer to retrieve Customer Data from the Customer Environment during the Transition Period and may charge additional Fees for Customer to do so, at Altinity's sole discretion, and provided that notwithstanding any termination of this Agreement,

the Agreement shall continue in full force and effect during the Transition Period. Except to the extent expressly set forth in this Section, Altinity has no obligation to archive or make available Customer Data after expiration or termination of this Agreement. This Section 5.4 shall not apply to Customer's Anywhere Environment(s).

5.5.   **Survival**. The following Sections will survive any expiration or termination of this Agreement: 1.5 (General Restrictions), 5 (Term and Termination), 6 (Billing and Payment), 7 (Confidential Information), 8 (Intellectual Property), 9.2 (Disclaimer of Warranties), 10 (Limitations of Liabilities), 11 (Indemnification), and 13 (General Terms).

5.6.   **Suspension of Service**. In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, Altinity reserves the right to suspend provision of the Service: (a) if Customer is overdue on a payment; (b) if Altinity deems such suspension necessary as a result of Customer's breach of Section 1.5 (General Restrictions) or Section 3.3 (Customer Obligations); (c) if Altinity reasonably determines suspension is necessary to avoid material harm to Altinity or its other customers, including if the Service is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Altinity's control; or (d) as required by law or at the request of governmental entities.

6.   BILLING AND PAYMENT.

6.1   **Service Fees**. The fees due and payable in consideration of the provision of the Services ("*Fees*") are set out in the applicable SoW. Each month, Customer will be charged for, and agrees to pay, all such Fees. Customer hereby authorizes Altinity (or its designee) to charge Customer's Payment Method within the first 5 business days of each month for all applicable Fees during the previous month. Customer acknowledges that the amount billed each month may vary depending on Customer's use of the Service, and authorizes Altinity to charge Customer's Payment Method for such varying amounts. All payment obligations are non-cancelable, and Fees are non-refundable.

6.2   **Taxes**. Altinity's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities including, for example, any sales, use, GST, value-added, withholding, or similar taxes, ("*Taxes*"). If Altinity has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Altinity will invoice Customer and Customer will pay that amount unless Customer provides Altinity with a valid tax exemption certificated authorized by the appropriate taxing authority.

6.3   **Late Payments.** Invoices are payable on receipt, and overdue thirty (30) days thereafter. Overdue amounts will bear interest at 1½% per month. All payments made under this Agreement will be in United States Dollars.

7.   CONFIDENTIAL INFORMATION.

7.1   **Definition**. "*Confidential Information*" shall mean all information that is may available by a party (the "*Disclosing Party*") identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the recipient (the "*Receiving Party*") to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Altinity Technology (other than open source Clickhouse software) and the terms and conditions of this Agreement will be deemed Confidential Information of Altinity without any marking or further designation. All Customer Data will be deemed Confidential Information of Customer without any marking or further designation. Confidential Information shall not include information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

7.2   **General Obligations.** Each Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The

Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8 INTELLECTUAL PROPERTY.

8.1   **Altinity Technology.** Customer agrees that, as between Altinity and Customer, Altinity or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, all Documentation and Client Software, any Technical Services deliverables, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, "*Altinity Technology*"). Except for the express limited rights set forth in this Agreement, no right, title or interest in any Altinity Technology is granted to Customer. Further, Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for the Service, except (if applicable) for the Client Software in object code format. Notwithstanding anything to the contrary herein, Altinity may freely use and incorporate into Altinity's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any users of the Services relating to Altinity's products or services ("*Feedback*").

8.2   **Service Data**. Notwithstanding anything to the contrary herein, Customer agrees that Altinity may collect Service Data, and Altinity may use Service Data to develop, improve, support, and operate its products and services during and after the term of this Agreement. This Section does not give Altinity the right to identify Customer as the source of any Service Data without written permission from Customer. "*Service Data*" means query logs and other information about Customer's use of the Service. Service Data does not include Customer Data.

8.3   **Marketing.** Altinity may use and display Customer's name, logo, trademarks, and service marks on Altinity's website and in Altinity's marketing materials in connection with identifying Customer as a customer of Altinity. Upon Customer's written request, Altinity will promptly remove any such marks from Altinity's website, and, to the extent commercially feasible, Altinity's marketing materials.

9. WARRANTIES.

9.1.   **Service Warranty**. Altinity warrants that each Service will operate in substantial conformity with the applicable Documentation. In the event of a breach of this warranty, Altinity will use commercially reasonable efforts to correct the reported non-conformity, at no charge to Customer, or if Altinity determines such remedy to be impracticable, either party may terminate. The foregoing shall be Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section. This warranty will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, or (ii) if the error was caused by misuse, unauthorized modifications, or third-party hardware, software, or services.'

9.2.   **Warranty for Personnel**. Altinity represents and warrants that any personnel who perform services for Customer are (i) to the extent permitted by law, subject to reference checks prior to hiring, (ii) are trained in Altinity procedures for delivering services in conformance with this Agreement, (iii) are subject to appropriate supervisory controls to ensure timely and accurate provision of services, (vi) are not Sanctioned Persons, (v) are bound by a duly executed legal agreement that includes confidentiality and IP assignment provisions, and (vi) are to the best of Altinity's actual knowledge in conformance with all legal requirements to perform work in their country of residence. "Sanctioned Person" means any individual listed in any sanctions-related list of designated persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state.

9.2.   **DISCLAIMERS OF WARRANTIES**. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH SERVICE, THE CLIENT SOFTWARE, SAMPLE DATA, AND ALL TECHNICAL SERVICES ARE PROVIDED "AS IS" AND ALTINITY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. ALTINITY DOES NOT WARRANT THAT THE USE OF ANY

SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES ALTINITY WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS. ALTINITY SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ALTINITY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARMS OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

10.   LIMITATIONS OF LIABILITY. EXCEPT AS PROVIDED BELOW, EACH PARTY AND ITS AFFILIATES' ENTIRE LIABILITY TO THE OTHER PARTY (FOR DAMAGES OR LIABILITY OF ANY TYPE) FOR CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID (OR WITH RESPECT TO CLAIMS FOR FEES DUE, PAYABLE) BY CUSTOMER TO ALTINITY ATTRIBUTABLE TO THE PRIOR 12 MONTHS UNDER THIS AGREEMENT. IN NO EVENT SHALL A PARTY BE LIABLE FOR THE LOSS OF PROFITS, LOSS OR INACCURACY OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION THE COST OF ANY SUBSTITUTE PROCUREMENT), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO A BREACH OF SECTIONS 1.5 (GENERAL RESTRICTIONS), 3.3 (CUSTOMER OBLIGATIONS), OR 7 (CONFIDENTIAL INFORMATION), AND A PARTY'S OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION).

11. INDEMNIFICATION.

11.1.   **Indemnification by Altinity**. Altinity will defend Customer from and against any claim by a third party alleging that the Service, when used as authorized under this Agreement, infringes a U.S. patent, copyright, or trademark and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Altinity (including reasonable attorneys' fees) resulting from such claim, Customer's use of the Service is (or in Altinity's opinion is likely to be) enjoined, if required by settlement or if Altinity determines such actions are reasonably necessary to avoid material liability, Altinity may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Service; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement. The foregoing indemnification obligation of Altinity will not apply to the extent the applicable claim is attributable to: (1) the modification of the Service by any party other than Altinity; (2) the combination of the Service with products or processes not specified in the Documentation or provided by Altinity; (3) any unauthorized use of the Service; or (4) any action arising as a result of Customer Data or any third-party deliverables or components contained within the Service. THIS SECTION SETS FORTH ALTINITY'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

11.2.   **Indemnification by Customer**. Customer will defend Altinity from and against any claim by a third party arising from or relating to any Customer Data or any product or service offered by Customer in connection with or related to the Altinity Service, and will indemnify and hold harmless Altinity from and against any damages and costs awarded against Altinity or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

11.3.   **Indemnification Procedures**. In the event of a potential indemnity obligation under this Section 11, the indemnified party shall: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 11 shall not relieve the indemnifying party of its obligations under this Section 11, however the indemnifying party shall not liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by such delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnifying party may not settle any claim in any matter that would require obligation on the part of the indemnified party (other than payment or ceasing to use infringing materials), or any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Further, any

indemnification obligation under this Section 11 will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.

12.   **TECHNICAL SERVICES.**   If Customer procures technical assistance from Altinity related to the Service ("*Technical Services*"), such technical assistance will be as set forth in a mutually agreed Statement of Work. Customer will pay Altinity at the rates set forth in the SoW (or, if not specified, at Atinity's then-standard rates) for such Technical Services. Customer will reimburse Altinity for actual reasonable travel and lodging expenses approved in advance by Customer. Customer may use anything delivered as part of the Technical Services in support of authorized use of the applicable Service and subject to the terms regarding Customer's rights to use the Service set forth in Section 1 (The Service) and the applicable SoW, but Altinity will retain all right, title and interest in and to any such work product, code (including SQL queries) and deliverables and any derivative, enhancement or modification thereof created by or on behalf of Altinity.

13.   **GENERAL PROVISIONS.**

13.1   **Entire Agreement and Construction**. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Service is provided as an online subscription, and that Altinity may change and update the Service (in which case Altinity may update the Documentation accordingly). The terms described in the Service Level Agreement and Support Policy, the Acceptable Use Policy, the Security Policy, and the DPA, respectively, may be updated from time to time upon reasonable notice to Customer (which may be provided through the Service).

13.2   **Waiver and Cumulative Remedies**. No failure or delay by either party in exercising any right under this Agreement constitutes a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13.3   **Severability**. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision shall be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.

13.4   **Governing Law**. This Agreement shall be governed by the laws of the United States and the State of California, without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The federal courts of the United States in the Northern District of California and the state courts of the State of California located in San Francisco, California will have exclusive jurisdiction over any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts.

13.5   **Arbitration**. Subject to each party's right to seek injunctive relief for breach of the other party's obligations related to confidential information or proprietary rights the parties agree that all disputes arising between them shall be submitted to and exclusively, resolved by arbitration. Any arbitration shall be conducted in Alameda County, California, USA in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

13.6   **Attorneys Fees**. If any action or proceeding is commenced to enforce this Agreement or any right arising in connection with this Agreement, the prevailing party in such action or proceeding will be entitled to recover from the other party the reasonable attorneys fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding.

13.7   **Force Majeure Event**. If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, vandals, or hackers, epidemic or other public health event (a "force majeure event") the time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence. If any force majeure event occurs, the affected party

will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

13.8   Independent Contractor. The parties are independent contractors to one another. Nothing in this Agreement or otherwise shall create an employer-employee, agency, joint venture or partnership relationship. No employee, agent, consultant or assistant of either party shall be considered an agent of the other party.

13.9   Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.

13.10   Export Control. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations.

13.11   Federal Government End Use Provisions. Altinity provides the Service, including all related software and the Altinity Technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227- 7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Altinity to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

13.12   Notices and Other Communications. Every notice required by this Agreement shall be delivered either by (i) personal delivery, (ii) overnight courier requiring the signature of the recipient (e.g. Federal Express), (iii) postage prepaid return receipt requested certified mail, or (iv) by facsimile or email transmission with confirmed delivery, addressed to the party for whom intended at the addresses specified on the signature page of the Agreement, or at such other address as the intended recipient shall have designated by written notice.

13.13   Counterparts, Facsimile Signatures. The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g.) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.