

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this “**Agreement**”) contains the terms and conditions that govern your access to and use of the Service (as defined below), and is an agreement between Datadog, Inc. (“**Datadog**,” “**we**,” “**us**,” or “**our**”) and you or the entity you represent (“**you**”). This Agreement takes effect when you click an “I Accept,” “Sign up” or similar button or check box presented with these terms or, if earlier, when you access or use the Service (the “**Effective Date**”). By accepting this Agreement, you agree to be legally bound by its terms. You represent to Datadog that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent that you have legal authority to bind that entity. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to them in Section 21.

1. Subscription Authorizations. Subject to the terms of this Agreement and the applicable Policies and Order, Datadog authorizes you to access and use the Service and Documentation solely for your internal, business use, by and through Authorized Users. This authorization is limited, nonexclusive and (subject to Sections 2.2 and 20.2) nontransferable.

2. Agreement Structure.

2.1. The Parties will agree on the prices that you will pay and other transaction-specific terms through Orders under this Agreement. Each Order will be deemed to incorporate all of the terms of this Agreement. If a term in an Order conflicts with, or is different than, a term in this Agreement, the provisions of this Agreement will prevail unless the term in the Order specifically states that it will prevail.

2.2. Subject to Datadog’s acceptance, you or your Affiliates (each, a “**Customer Entity**”) may enter into Orders. Each Order will be a separate agreement between Datadog and the Customer Entity that signs the Order and in each such case, all references to “you” in this Agreement will be deemed references to the Customer Entity that signed the Order; provided, however, that you and your Affiliates will be jointly liable for compliance with the terms of this Agreement and any Order by any Customer Entity, and you accept full liability as between the Parties for the actions and inactions of your Affiliates. A breach of the terms of this Agreement or any Order by any Customer Entity will be considered a breach by each Customer Entity.

2.3. An Order may state a term for that Order (the “**Order Term**”). In the event an Order does not specify a fixed term, then the Order Term will run from the Order’s effective date until the end of the calendar month in which either Party gives notice of termination in accordance with Section 3.2, unless the Order is otherwise terminated earlier in accordance with this Agreement or the Order.

3. Payments.

3.1. You shall pay to Datadog the amounts specified in each Order in accordance with its terms and this Agreement within 30 days of the date of each Datadog invoice. All amounts shall be paid in U.S. dollars and shall be fully earned when paid and non-refundable unless: (i) an Order is terminated early by you pursuant to Section 5.1; (ii) this Agreement and all Orders are terminated early by you pursuant to Section 13; or (iii) this Agreement and all Orders are terminated early by Datadog pursuant to Section 17.2, in which case (a) you shall not be obligated to pay any additional amounts specified in the applicable Orders following the effective date of termination, and (b) Datadog shall, within 30 days of the effective date of such termination, refund to you a pro rata share of any unused amounts prepaid by you under the applicable Orders for the Service on the basis of the remaining portion of the current Order Terms. In all other cases, and regardless of whether you and your Authorized Users access or use the Service at the levels reflected in the Orders or otherwise, you are responsible for paying all amounts specified in the Orders through expiration of the applicable Order Terms. You must assert any payment dispute in writing within 10 days of your receipt of the invoice giving rise to the dispute. Datadog will not exercise its suspension or

termination rights or apply interest on late payments if you dispute the applicable charges reasonably and in good faith, and provide reasonable cooperation to resolve the dispute. Except in the event of such good faith disputes, all unpaid invoices past due are subject to a late charge equal to the lesser of 1.5% per month or the maximum interest allowed by law. If litigation should be commenced for collection of past due amounts, the prevailing Party will be entitled to recover its reasonable attorneys' fees and related costs from the non-prevailing Party.

3.2. **Unless either Party gives the other Party written notice, in accordance with Section 20.1, of its intention not to renew an Order at least 15 days prior to the Order's then current expiration date, the Order will automatically renew for additional periods of the same duration as the expiring Order Term (each such period, a "Renewal Term"). If the Renewal Term is longer than one month, then at least 15 – and no more than 30 – days prior to the commencement of the Renewal Term, Datadog will notify you in writing of such renewal in accordance with Section 20.1.**

3.3. Notwithstanding the foregoing, if you are accessing the Service through a Channel Partner, the terms of your subscription with such Channel Partner will control with respect to all pricing and fees; provided, however, that Datadog may suspend or terminate your access to the Service if such Channel Partner has not paid Datadog the applicable fees relating to your use.

3.4. Fees are based on your expected use of the Service and the payment commitments you have made with respect to such use. Should your actual use exceed the aggregate committed use at any time during the Order Term, Datadog shall have the right to terminate the applicable Order immediately with no penalty or liability to you.

4. **Taxes.** All fees and amounts set forth in the Orders are exclusive of taxes, levies, duties or charges imposed by government authorities (collectively, "**Taxes**"). You shall be solely responsible for all sales, service, value-added, use, excise, consumption and any other Taxes on amounts payable by you under the Orders and this Agreement (other than any Taxes on Datadog's income, revenues, gross receipts, personnel or assets). If you are required to deduct or withhold any Tax under Applicable Law, you must pay the amount deducted or withheld as required by Applicable Law and pay Datadog an additional amount so that Datadog receives payment in full of amounts due under this Agreement as if there were no deduction or withholding.

5. **Service Availability and Support.**

5.1. Datadog shall use commercially reasonable efforts to make the Service available for access and use by end users over the Internet at least 99.8% of the time as measured over the course of each calendar month during an Order Term, excluding unavailability as a result of scheduled maintenance (the "**Base Availability Standard**"). If the Service does not meet the Base Availability Standard for two consecutive months, you may terminate the applicable Order in the calendar month following such two-month period upon written notice to Datadog. You may request Service availability information by submitting a support request through the Service.

5.2. Subject to this Agreement, Datadog shall provide Authorized Users support through the Service and by email with respect to their use of the Service ("**Support**"). Although response times are not guaranteed, Datadog shall endeavor to respond to requests for Support within 48 hours. In the event any Support is not performed with reasonable skill, care and diligence, Datadog shall re-perform the Support; and you acknowledge that re-performance shall be your sole and exclusive remedy for any such defective performance. Notwithstanding the foregoing, if you are accessing the Service through a Channel Partner, to the extent your agreement with such Channel Partner provides for additional or different support services from the Channel Partner, then such agreement will govern with respect to the Channel Partner's support services.

5.3. Although not required, you may install a Datadog software agent on your Hosts to support the collection, and reporting to the Service, of events and metrics ("**Datadog Agent**"). You may also

access the Datadog API, as well as certain client libraries developed and made available by Datadog from time to time that wrap the API (“**Datadog Libraries**”) to support access and use of the Service. Both the Datadog Agent and the Datadog Libraries (collectively, the “**Datadog Tools**”) are made available under the terms of the open source license agreement(s) referenced in the applicable help, notices, about or source files. The source code and associated licenses for the Datadog Tools are available at <https://github.com/DataDog>.

5.4. If you elect to use the Datadog Agent or a Datadog Library, you acknowledge and agree that: (a) such Datadog Tool is only made available to support access and use of the Service; (b) Datadog has no liability with respect to any other use of such Datadog Tool; and (c) you are responsible for complying with the applicable license(s) for such Datadog Tool. To the extent any such applicable license requires that Datadog provide you the right to use any open source software in a Datadog Tool that is inconsistent with rights granted in this Agreement, then the rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software.

6. Non-Datadog Services and Material.

6.1. The Service supports integrations and other connections to certain Non-Datadog Services. If an Authorized User chooses to use a Non-Datadog Service with the Service, in doing so, you hereby grant to Datadog permission to interoperate with the Non-Datadog Service. Your acquisition and use of Non-Datadog Services is governed solely by the terms of the relationship between you and the provider of the Non-Datadog Services.

6.2. Although you may be able to connect to or otherwise access Non-Datadog Services or other Non-Datadog Material through the Site or Service, you acknowledge and agree that: (a) Datadog does not control and is not responsible for any Non-Datadog Material; (b) Datadog has no liability with respect to any use of Non-Datadog Material; and (c) you are responsible for complying with Datadog’s Acceptable Use Policy and with any licenses and other terms applicable to the Non-Datadog Material. Any changes to Non-Datadog Material, including their availability or unavailability, during the Order Term does not affect your obligations under this Agreement.

7. Use of Customer Data. You hereby grant Datadog a worldwide, non-exclusive, royalty-free right and license during the Order Term to use, reproduce, transmit, perform, display and store Customer Data for the purposes of Datadog and, subject to Section 20.3, its Affiliates and third-party Providers providing and supporting the Service for your benefit. Subject to the confidentiality obligations contained in Section 11, you agree Datadog may additionally use Customer Data: (a) to maintain, evaluate, develop and improve its products and services; and (b) in aggregate form only, not attributable to you, for research and marketing purposes. The Privacy Policy does not apply to Customer Data.

8. Privacy and Security.

8.1. User Personal Data is required by Datadog to provide and support the Service, for example, to authenticate Authorized Users and to respond to requests for Support. You shall ensure that all User Personal Data is accurate and correct at all times during the Order Term. Datadog shall only use User Personal Data in accordance with the Privacy Policy and Applicable Law. Except for limited User Personal Data, you acknowledge the Service is not intended for use by you or any Authorized User to transfer, process, use or store information relating to an identified or identifiable natural person, and you agree to not use the Service for such purpose.

8.2. Without limiting the foregoing, you represent and agree that that you shall not include in Customer Data any Sensitive Personal Information. For such purpose, “**Sensitive Personal Information**” means any information that: (a) must be protected in accordance with specific or heightened security requirements imposed by applicable law or industry standards; or (b) would require notification to government agencies, individuals or law enforcement if subject to unauthorized access, use or disclosure.

Examples of Sensitive Personal Information include without limitation government-issued identification numbers (such as driver's license numbers or Social Security numbers), financial account numbers, nonpublic personal information (as defined by the Financial Services Modernization Act of 1999 and applicable regulations), cardholder data (as defined by the PCI DSS), and protected health information (as defined by the Health Insurance Portability and Accountability Act of 1996 and applicable regulations).

8.3. Datadog shall maintain throughout the Order Term an industry-standard information security program, including physical and technical security policies and procedures, with respect to Customer Data and User Personal Data. The program shall include measures: (a) to protect Customer Data and User Personal Data from accidental loss and from unauthorized access, use, alteration or disclosure; and (b) which provide a level of security appropriate to the nature of the data and the risk represented by its transfer, processing, use and storage.

9. Requirements and Restrictions.

9.1. You shall be solely responsible for providing, installing and maintaining at your own expense all equipment, facilities and services necessary to enable Authorized Users' access and use of the Service.

9.2. You shall be strictly responsible for the performance of your Affiliates and their personnel (including employees and contractors) and Authorized Users, and their use of the Service and Support, in compliance with this Agreement. Without limiting the foregoing, you represent and agree that: (a) you or your licensors have all rights in the User Personal Data and Customer Data (including without limitation having provided all notices and received all consents and authorizations) required for the Parties to perform their respective obligations and exercise their respective rights in connection with this Agreement; and (b) you shall be solely responsible for ensuring that the use of User Personal Data and Customer Data that Authorized Users post, send or otherwise make available using the Service complies with the Acceptable Use Policy, all Applicable Laws, and any other legal or contractual restrictions relating to User Personal Data or Customer Data.

9.3. Subject to Datadog's compliance with the Privacy Policy and Section 8.3, you are solely responsible for ensuring the security and confidentiality of all User Personal Data. Without limiting the foregoing, you shall use commercially reasonable efforts to prevent unauthorized access or use of the Service, and shall contact Datadog promptly if: (a) User Personal Data related to the Service, or any associated password, is lost, stolen or disclosed to an unauthorized person; or (b) you reasonably believe the Service has otherwise been compromised.

9.4. No provision of this Agreement includes the right to, and you shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Service; (b) modify or create any derivative work based upon the Service; (c) engage in, permit or suffer to continue any copying or distribution of the Service; (d) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Service (except to the extent such restriction is limited under Applicable Law); (e) access the Service in order to build a competitive solution or to assist any third party to build a competitive solution; (f) remove, obscure or alter any proprietary notice related to the Service; or (g) use or permit others to use the Service other than as described in this Agreement, the Policies and Documentation, or for any unlawful purpose. In the event Datadog believes that you are violating any of the terms set forth in this Section, in addition to any other remedies available at law or in equity (including termination pursuant to Section 13), Datadog will have the right to suspend your (or any Authorized User's) access to and use of the Service for so long as is reasonably necessary to address such potential violation. Datadog shall notify you of any such suspension by email and in advance (except in urgent or emergency situations), and work with you in good faith to resolve the potential violation.

9.5. Each Party hereby represents and warrants to the other that the representing Party has the authority to enter into and perform this Agreement, and such Party's entering into this Agreement, and

performance of its obligations and exercise of its rights under this Agreement, do not and will not violate any Applicable Laws.

10. Proprietary Rights.

10.1. Subject only to the limited rights expressly granted in this Agreement, as between you and Datadog, you will retain all right, title and interest in and to the Customer Data and all intellectual property rights therein.

10.2. You may provide Datadog with bug reports, suggestions or other feedback related to the Service (collectively, “**Feedback**”). By submitting any such feedback, you hereby assign to Datadog all right, title and interest in and to such feedback together with all intellectual property rights therein.

10.3. The Service, together with all know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, user interfaces, techniques, methods, applications, libraries, documentation or other technology and materials of any kind, or any enhancement thereto, used or made available by Datadog to you or any Authorized User in connection with the Service and Support, constitute or otherwise involve valuable intellectual property rights of Datadog and all right, title and interest in and to the foregoing will, as between the Parties, be owned by Datadog. No title to or ownership of the Service, or any intellectual property rights associated therewith, is transferred under this Agreement and Datadog reserves all rights not otherwise expressly granted herein.

10.4. Datadog may use your company name and logo to identify you as a customer on the Site, on publicly available customer lists, and in media releases during the term of the Agreement.

11. Confidentiality.

11.1. As used in this Agreement, “**Confidential Information**” means any information disclosed by one Party, its Affiliates, business partners or their respective employees, contractors or agents (the “**Discloser**”) that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes without limitation: (a) information relating to the Discloser’s or its Affiliates’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that the Discloser is obligated to keep confidential; (c) Customer Data; and (d) the terms of this Agreement. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the “**Recipient**”) prior to receiving the same from the Discloser in connection with this Agreement; (ii) is independently developed by the Recipient without reference to or use of the Discloser’s Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

11.2. Each Party reserves any and all right, title and interest (including any intellectual property rights) that it may have in or to any Confidential Information that it may disclose to the other Party under this Agreement. The Recipient shall protect Confidential Information of the Discloser against any unauthorized use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event shall use less than a reasonable standard of care to protect such Confidential Information. The Recipient shall use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This Section will not be interpreted or construed to prohibit: (a) any use or disclosure which is necessary or appropriate in connection with the Recipient’s performance of its obligations or exercise of its rights under this Agreement; (b) any use or disclosure required by applicable law, provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information; or (c) any use or disclosure made with the consent of the Discloser. In the event of any breach or threatened breach by the Recipient of its obligations under this Section, the Discloser will be entitled to

seek injunctive and other equitable relief to enforce such obligations. These obligations of confidentiality shall survive expiration or termination of this Agreement.

12. Term. Unless terminated early in accordance with Sections 3.2, 13 or 17.2, the term of this Agreement will continue through the expiration or earlier termination of the last Order to be in effect.

13. Early Termination. Datadog may terminate any Order or suspend Service upon written notice to you if you fail to pay any amount due under the Order, and such failure continues more than 10 days after Datadog's delivery of written notice. In addition, either Party may terminate this Agreement and all Orders, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach (if capable of cure) remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach. If you are accessing the Service through a Channel Partner, in addition to its other rights of termination hereunder, if Datadog and such Channel Partner suspend or terminate their agreement with one another, then Datadog may immediately suspend or terminate your Service without notice unless you enter into a new agreement for the Service with Datadog or another Channel Partner.

14. Effect of Termination. Upon expiration or earlier termination of an Order: (a) all rights granted to you with respect to the Service and Support under such Order will terminate effective as of the effective date of termination; (b) Datadog shall have no obligation to provide the Service to you or Authorized Users after the effective date of the termination; and (c) you shall pay to Datadog any amounts payable for your and any Authorized User's use of the Service through the effective date of the termination, together with all other amounts in accordance with the Order and Section 3. For up to 15 days from the effective date of termination an Authorized User designated by you will be permitted to continue to access and download the information that is stored in the Service database on the effective date of termination, provided that (i) you have paid all amounts due under this Agreement; (ii) the designated Authorized User shall not otherwise access or use the features or functionality of the Service; and (iii) such access and use shall otherwise continue to be subject to the terms and conditions of this Agreement.

15. Anti-Corruption and Export Compliance.

15.1. You shall, in connection with this Agreement: (a) comply with Applicable Laws relating to anti-bribery and anti-corruption, which may include the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010; (b) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions ("**Export Laws**"), including designating countries, entities and persons ("**Sanctions Targets**"); and (c) not directly or indirectly export, re-export or otherwise deliver the Service or Support to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. You represent that you are not a Sanctions Target or prohibited from receiving the Service or Support pursuant to this Agreement under Applicable Laws, including Export Laws.

15.2. You represent that you have not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any employee, agent or representative of Datadog or any of its Affiliates or Channel Partners in connection with this Agreement. The above representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law. If you learn of any violation of the above restriction, you shall promptly notify Datadog at legalcompliance@datadoghq.com.

16. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT:

16.1. THE SERVICE, SUPPORT AND ALL OTHER ITEMS MADE AVAILABLE BY DATADOG ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. DATADOG ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (a) ERRORS, MISTAKES OR INACCURACIES OF CUSTOMER DATA OR INFORMATION POSTED, TRANSMITTED OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE, (b) PERSONAL

INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM USE OF THE SERVICE OR SUPPORT, (c) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, OR (d) THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY NOT UNDER DATADOG'S CONTROL.

16.2. NEITHER PARTY MAKES ANY WARRANTY OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

17. Indemnification.

17.1. Subject to Section 17.3, you agree to defend, indemnify and hold harmless Datadog, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "**Datadog Indemnitees**"), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, "**Losses**") arising out of or related to any claim, suit, action or proceeding (each, an "**Action**") by a third party arising out of or relating to Customer Data or your (or an Authorized User's) use of the Service, breach of this Agreement or violation of Applicable Law.

17.2. Subject to Section 17.3, Datadog agrees to defend, indemnify and hold harmless you, your Affiliates and your respective employees, contractors, agents, officers and directors (collectively, "**Customer Indemnitees**"), from and against any and all Losses arising out of or related to any Action by a third party alleging that use of the Service in accordance with this Agreement infringes such third party's United States patent or copyright, or misappropriates such third party's trade secrets (each, a "**Customer Infringement Claim**"). If the Service becomes, or in Datadog's opinion is likely to become, the subject of a Customer Infringement Claim, Datadog may in its discretion and at its own expense: (a) obtain for you the right to continue using the Service; (b) modify the Service so that it no longer infringes or misappropriates; or (c) terminate this Agreement and all Orders and issue a pro rata refund pursuant to Section 3.1(b). Datadog will have no liability for any Customer Infringement Claim to the extent it arises from: (i) your use of the Service in a manner inconsistent with its intended use under the Documentation; (ii) your breach of this Agreement; (iii) Customer Data; (iv) Non-Datadog Material, including the combination of any Non-Datadog Material with the Services; (v) Datadog's compliance with your specifications or instructions; or (vi) your use of the Service after Datadog notifies you to discontinue use due to an Customer Infringement Claim. THE FOREGOING STATES DATADOG'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

17.3. A Customer Indemnitee or Datadog Indemnitee (each, an "**Indemnitee**") seeking indemnification shall promptly notify the other Party (each, an "**Indemnifying Party**"), in writing of any Action for which it seeks indemnification pursuant to Section 17 and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 17.3 will not relieve the Indemnifying Party of its obligations under Section 17.1 or 17.2 (as applicable) except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an Action without the Indemnified Party's written consent if such settlement shall require action or payment by the Indemnified Party.

18. Limitations of Liability.

18.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN SECTION 18.2: (a) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES

OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT; AND (b) IN NO EVENT SHALL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID TO DATADOG BY A CUSTOMER ENTITY UNDER THE APPLICABLE ORDER(S), INCLUDING PRIOR ORDERS FOR THE SAME SERVICE, IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

18.2. The exclusions and limitations in Section 18.1 shall not apply to a Party's indemnification obligations under Section 17, Losses arising out of a Party's failure to comply with its confidentiality obligations under Section 11, or your payment obligations to Datadog under this Agreement.

19. Modifications. Datadog may modify this Agreement at any time by posting a revised version at <https://datadoghq.com/legal/MSA>, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted. By using the Service after the date on which any modifications enter into effect, you agree to the latest version of this Agreement.

20. Miscellaneous.

20.1. You acknowledge and agree that Datadog shall provide notices to you by email at the address associated with your Order. You shall provide notices to Datadog by email to legal@datadoghq.com, with a duplicate copy sent via registered mail, return receipt requested, to the following address: Datadog, Inc., Attn: Legal, 620 8th Avenue, 45th Floor, New York, NY 10018, or such other address as Datadog may direct from time to time on the Site. You must specify in all such notices that the notice is being given under this Agreement. Emailed notices will be deemed given and received one business day after the email is sent.

20.2. So long as you remain current in the payment of all amounts when due, you may assign this Agreement in connection with any merger, consolidation or reorganization involving you (regardless of whether you are a surviving or disappearing entity), or a sale of all or substantially all of your business or assets relating to this Agreement to an unaffiliated third party. Subject to the foregoing, you may not assign any of your rights or obligation under this Agreement, whether by operation of law or otherwise, without Datadog's prior written consent, and any purported assignment in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

20.3. In the ordinary course of its business, Datadog uses third-party service providers (collectively, "**Providers**") to support the provision of the Service and Support generally (i.e., not specifically for you). For instance, Datadog currently uses Amazon Web Services (AWS) to host the Service. In addition, Datadog may provide the Service or Support through one or more Affiliates. Datadog reserves the right to engage and substitute Providers and Affiliates as it deems appropriate, but shall remain responsible to you for (a) provision of the Service and Support and (b) the actions and omissions of its Providers and Affiliates undertaken in connection with this Agreement.

20.4. The Service is provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service. If you or any Authorized User is using the Service on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you and your Authorized Users must immediately discontinue use of the Service. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

20.5. The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one Party as an employee, agent, joint venture partner or servant of another.

20.6. Datadog shall have no liability to you, Authorized Users or third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control, including without limitation acts of God or nature, fires, floods, strikes, civil disturbances or terrorism or interruptions in power, communications, satellites, the Internet or any other network that are beyond its reasonable control.

20.7. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of New York, without reference to its choice of law principles. Any legal action or proceeding arising under or relating to this Agreement shall be brought exclusively in the state or federal courts located in New York County, New York, USA, and the Parties expressly consent to personal jurisdiction and venue in those courts.

20.8. This Agreement is the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, oral or written, and all other communications and agreements between the Parties relating to the subject matter of this Agreement. In the event any information posted on the Site from time to time conflicts with any provision of this Agreement, the applicable provision of this Agreement shall control. Any terms and conditions of any other instrument issued by you in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. Additionally, this Agreement supersedes any confidentiality or non-disclosure agreement previously entered into by the Parties with respect your or an Affiliate's evaluation of the Service or otherwise with respect to the Service. This Agreement may be modified only in accordance with Section 19 or by a written instrument duly executed by authorized representatives of the Parties. The failure of Datadog to exercise or enforce any condition, term or provision of this Agreement will not operate as a waiver of such condition, term or provision. Any waiver by either Party of any condition, term or provision of this Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

20.9. This Agreement and any Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement or any Order by fax or by email of a scanned copy, or execution and delivery through an electronic signature service (such as DocuSign), shall be effective as delivery of an original executed counterpart of this Agreement or the relevant Order.

21. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to them in this Section 21.

21.1. "Acceptable Use Policy" means Datadog's Acceptable Use Policy currently published at <https://datadoghq.com/legal/acceptable-use>, as it may be updated from time to time.

21.2. "Affiliate" means, with respect to a Party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such Party; "control" (including the terms "controlled by" and "under common control with") means the direct or indirect ownership of more than 50% of the voting securities of a business entity.

21.3. "Applicable Laws" means any and all governmental laws, rules, regulations or orders that are applicable to a particular Party's performance under this Agreement.

21.4. "Authorized User" means your individual employee, agent or contractor or, subject to Section 2.2, Affiliate, who is authorized by you or the applicable Affiliate to access and use the Service pursuant to the terms of the applicable Order and this Agreement.

21.5. “Channel Partner” means an entity that has entered into a reseller, managed service provider or similar relationship with Datadog pursuant to which such entity is authorized by Datadog either to sublicense the Service to its own customers or to use the Service as a component of its own service offerings to its customers. Channel Partners are not the agents or representatives of Datadog; and Datadog accepts no responsibility for the actions or omissions of Channel Partners other than Datadog’s own undertakings to you as set out in this Agreement. Except as otherwise provided herein, anyone gaining access to the Service through a Channel Partner is subject to the terms of this Agreement.

21.6. “Container” means an isolated, self-contained software operating environment that includes application software and limited operating system libraries and settings.

21.7. “Cookie Policy” means Datadog’s Cookie Policy currently published at <https://datadoghq.com/legal/cookies>, as it may be updated from time to time.

21.8. “Custom Metric” means any metric that is not automatically collected by the Service, for example, custom checks or API-level metrics from your application.

21.9. “Customer Data” means the data, content and other material that you and/or any Authorized User run on or through the Service, cause to interface with the Service, upload to the Service, or otherwise transfer, process, use or store in connection with the Service. Customer Data does not include User Personal Data.

21.10. “Documentation” means such technical and operations documentation as Datadog may make available at <https://docs.datadoghq.com/guides/overview/>, or such alternate or successor website as Datadog may designate from time to time.

21.11. “Hosts” means concurrently monitored hosts/servers, as determined on a calendar month basis.

21.12. “Non-Datadog Material” means any third-party material identified in an Order, any publicly available client libraries written by third parties to support use of the Service and licensed on an open source basis, and Non-Datadog Services.

21.13. “Non-Datadog Services” means systems, software and hosted services provided by you or by a third party to which the Service supports integrations or other connections.

21.14. “Order” means a separate (a) online order for a Service completed and submitted by you through the Site and accepted by Datadog, (b) written order for a Service pursuant to this Agreement executed by both Datadog and a Customer Entity (as defined in Section 2.2), or (c) order for a Service by you through a Channel Partner.

21.15. “Policies” means the Acceptable Use Policy, Privacy Policy, Cookie Policy, Service Terms and any other policy or terms referenced in, or incorporated into, this Agreement or an Order.

21.16. “Privacy Policy” means Datadog’s Privacy Policy currently published at <https://datadoghq.com/legal/privacy>, as it may be updated from time to time.

21.17. “Service” means the subscribed service offering(s) listed in the applicable Order, as such offering(s) are described at <https://www.datadoghq.com/product/>. The features and functionality of Service may be modified, enhanced or otherwise changed from time to time, provided such change does not result in a material adverse change to the applicable Service (in its entirety) as it existed at the Effective Date.

21.18. “Service Terms” means terms and conditions, in addition to those set out in this Agreement and an Order, that apply to a particular Service currently published at <https://datadoghq.com/legal/service-terms>, as they may be updated from time to time. If a term in the applicable Service Terms conflicts with, or is different than, a term in this Agreement, then the Service Terms will prevail.

21.19. "Site" means <https://www.datadoghq.com/>, or such alternate or successor website as Datadog may designate from time to time.

21.20. "User Personal Data" means identifying information relating to Authorized Users, such as name, user name, billing information and email address, furnished by you or Authorized Users to Datadog in connection with their access and use of the Service.