

## ThoughtSpot Marketplace Application License Agreement

Version: 23 June 2020

THIS THOUGHTSPOT MARKETPLACE APPLICATION LICENSE AGREEMENT (“**AGREEMENT**”) FORMS A BINDING AGREEMENT BETWEEN YOU INDIVIDUALLY OR THE BUSINESS ENTITY OR PUBLIC AGENCY ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT (“**CUSTOMER**”) AND THOUGHTSPOT, INC. (“**THOUGHTSPOT**”). THIS AGREEMENT GOVERNS THE USE OF AN APPLICATION RECEIVED THROUGH, OR OPERATED USING, AN APPLICATION MARKETPLACE SUCH AS THE AMAZON WEB SERVICES MARKETPLACE OR THE MICROSOFT AZURE MARKETPLACE (“**MARKETPLACE**”).

THIS AGREEMENT IS ACCEPTED BY: (1) INDICATING ACCEPTANCE OF THESE TERMS BY CLICKING “SUBMIT,” “NEXT,” “ACCEPT” OR A SIMILAR BUTTON WHEN THIS AGREEMENT IS REFERENCED ON THE MARKETPLACE, IN THE APPLICATION, OR ON A WEB PAGE TO RECEIVE THE APPLICATION, OR SIGNING AN ORDER FORM OR OTHER ORDERING DOCUMENT REFERENCING THIS AGREEMENT FOR A NEW OR RENEWAL LICENSE; OR (2) ACCESSING OR USING ANY PORTION OF THE APPLICATION. THE INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS AND WARRANTS THAT HE OR SHE: (A) IS AN EMPLOYEE, CONTRACTOR, OR AGENT OF, AND HAS THE AUTHORITY TO REPRESENT, CUSTOMER; AND (B) HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT WISH TO ACCEPT THIS AGREEMENT, OR THE INDIVIDUAL ACCEPTING THE AGREEMENT DOES NOT HAVE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT, THEN DO NOT CLICK OR SIGN TO ACCEPT THIS AGREEMENT OR ACCESS OR USE THE APPLICATION.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF THE APPLICATION, THE EVALUATION LICENSE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

FROM TIME TO TIME, THOUGHTSPOT MAY MODIFY THIS AGREEMENT. UNLESS OTHERWISE SPECIFIED BY THOUGHTSPOT, CHANGES BECOME EFFECTIVE FOR EXISTING CUSTOMERS UPON RENEWAL OF THE THEN-CURRENT LICENSE TERM (DEFINED BELOW). THOUGHTSPOT WILL USE REASONABLE EFFORTS TO NOTIFY CUSTOMERS OF THE CHANGES THROUGH COMMUNICATIONS THROUGH THE MARKETPLACE, EMAIL, OR OTHER MEANS. CUSTOMERS MAY BE REQUIRED TO CLICK TO ACCEPT THE MODIFIED AGREEMENT BEFORE USING THE APPLICATION IN A RENEWAL LICENSE TERM, AND IN ANY EVENT CONTINUED USE OF THE SOFTWARE DURING THE RENEWAL LICENSE TERM WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE VERSION OF THE AGREEMENT IN EFFECT AT THE TIME THE RENEWAL SUBSCRIPTION TERM BEGINS.

AWS, AWS MARKETPLACE, AMAZON REDSHIFT, AZURE, AZURE MARKETPLACE, GOOGLE, GOOGLE BIGQUERY, SNOWFLAKE, AND ALL OTHER MARKETPLACE LOGOS EXCEPT THOSE SHOWN ON THE MARKETPLACE LISTING FOR THE THOUGHTSPOT APPLICATION ARE TRADEMARKS OF THEIR RESPECTIVE HOLDERS OR THE HOLDERS' AFFILIATES AND NOT THOUGHTSPOT.

THE APPLICATION MAY ONLY BE INSTALLED AND USED ON THE INSTANCE ON WHICH THE APPLICATION IMAGE IS INSTALLED BY THE MARKETPLACE. USE OF THE APPLICATION REQUIRES THAT THE CUSTOMER MAINTAIN A VALID ACCOUNT WITH THE MARKETPLACE PROVIDER INCLUDING CREDENTIALS OR SUBSCRIPTIONS WITH ADEQUATE SIZE AND CONFIGURATIONS TO SUPPORT YOUR USE OF THE APPLICATION, AND AN INSTANCE OF THE MARKETPLACE PROVIDER'S SOFTWARE UPON WHICH THE APPLICATION WILL BE INSTALLED. NOTWITHSTANDING ANY FREE TRIAL OR EVALUATION USE OF THE APPLICATION THAT MAY BE AVAILABLE, YOU MAY STILL BE CHARGED BY THE MARKETPLACE PROVIDER FOR THE INSTANCE ON WHICH THE APPLICATION IS INSTALLED.

### 1. Definitions.

- 1.1. “**Affiliate**” means, with respect to a party, any legal entity (such as a corporation, partnership, or other legal entity) that controls, is controlled by, or is under common control with such party. For purposes of this definition, “control” means the legal power to direct or cause direction of the general management of the corporation, partnership, or other legal entity. Affiliates of Customer are “**Customer Affiliates**” and Affiliates of ThoughtSpot are “**ThoughtSpot Affiliates**.”
- 1.2. “**Application**” means the ThoughtSpot search analytics software application ordered by Customer via the Marketplace, sample data or data uploaded by ThoughtSpot therein (excepting Customer Data), any updates and upgrades thereto, and any modifications, enhancements, or improvements, of any of the foregoing.



- 1.3. **“Confidential Information”** means: **(a)** the Application, its pricing, and any non-public technical documentation about the Application (which will be deemed ThoughtSpot’s Confidential Information); **(b)** any information of a party that is disclosed in writing or orally and designated confidential at the time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, the receiving party should reasonably understand to be the disclosing party’s confidential information; and **(c)** any amendment to this Agreement (which will be deemed Confidential Information of both parties). Confidential Information will not include information that the Recipient can demonstrate was: **(i)** generally known to the public at time of disclosure or becomes generally known through no wrongful act or omission of the Recipient; **(ii)** rightfully in the Recipient’s possession, or otherwise rightfully known by the Recipient, at time of disclosure by the Discloser and not subject to a confidentiality obligation; or **(iii)** independently developed by employees and contractors of the Recipient who had no access to the Confidential Information.
- 1.4. **“Customer Data”** means electronic data uploaded by or for Customer and processed in the Application for search analytics.
- 1.5. **“Documentation”** means the then-current service operating and interface instructions (including API documentation) published for each version for use of the Application published by ThoughtSpot at <https://docs.thoughtspot.com/>.
- 1.6. **“Effective Date”** means the date that Customer accepts this Agreement as described above.
- 1.7. **“Instance”** means a virtual machine for running applications on the infrastructure of the entity offering the Marketplace and to which the Application is provisioned for Customer’s use pursuant to this Agreement.
- 1.8. **“Intellectual Property Rights”** or **“IPR”** means all intellectual property or other proprietary rights worldwide, including patent, trademark, service mark, copyright, trade secret, know-how, moral right, and any other intellectual and intangible property rights, including all continuations, continuations in part, applications, renewals, and extensions of any of the foregoing, whether registered or unregistered.
- 1.9. **“Law”** means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.
- 1.10. **“License Term”** means the period of authorized use of the Application as set forth in the order processed on the Marketplace.
- 1.11. **“Support”** means technical support and maintenance for the Application, as set forth in the Support Guide.
- 1.12. **“Support Guide”** means the ThoughtSpot Support and Maintenance Program Guide at <http://www.thoughtspot.com/legal/>.

## 2. Purchasing.

- 2.1. **Orders.** Customer’s purchases of Application licenses through the Marketplace are governed by this Agreement. Each Marketplace order will include the pricing and pricing metric (e.g., rows made available) applicable to the transaction. Payments are based on allocated capacity purchased and not actual use. Upon purchase, each order is non-cancellable and, except as otherwise provided in this Agreement, non-refundable. Prices stated for each purchase are final. Each License Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire License Term.
- 2.2. **Invoices and Payment.** ThoughtSpot will issue to Customer the initial invoice corresponding with each Marketplace order when the Application is available to Customer for download. Customer will pay each invoice in full, within 30 days after the date of the electronic invoice to the email address provided by Customer. Late payments will accrue interest at a rate of 1.5% per month or the legal maximum, whichever is lower. Customer will make payments free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by ThoughtSpot. Customer may not reduce any amount payable to ThoughtSpot under this Agreement due to any counterclaim, set-off, adjustment, or other claim Customer might have against ThoughtSpot, any other party, or otherwise. ThoughtSpot may verify (with Customer’s reasonable cooperation, if necessary) that Customer’s use is in compliance with the purchased use limitations herein, and if ThoughtSpot determines that Customer has exceeded its permitted use rights, ThoughtSpot will notify Customer and within 30 days thereafter Customer shall either: **(a)** reduce its use to match its license grant; or **(b)** purchase licenses commensurate with its actual use.
- 2.3. **Taxes.** Amounts payable under this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments of any nature, including, for example, sales, use, GST, withholding, value-added, or similar taxes, imposed by any jurisdiction, and the interest and penalties on any of these (collectively, **“Taxes”**).



Customer will pay all Taxes associated with the transactions, access, and use, contemplated by this Agreement except Taxes based on ThoughtSpot's net income, property, or employees. If ThoughtSpot has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, ThoughtSpot will invoice Customer and Customer will pay that amount unless Customer provides ThoughtSpot with a valid tax exemption certificate authorized by the appropriate taxing authority prior to the applicable purchase. Taxes will not be deducted from payments to ThoughtSpot, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, ThoughtSpot receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon ThoughtSpot's request, Customer will provide to ThoughtSpot its proof of withholding tax remittance to the respective tax authority.

- 2.4. **Evaluation Licenses.** ThoughtSpot may occasionally offer to Customer evaluation, trial, or other free licenses to the Application subject to this Agreement (an "**Evaluation License**"). Customer may use an Evaluation License exclusively to determine whether to purchase a license to the Application. In addition, Customer must use any Evaluation License indicated as "test" or "beta" solely with non-production, non-confidential data. Customer may not use an Evaluation License for any production, professional, or for-profit purpose. The License Term applicable to an Evaluation License will be 30 days and is limited to up to five users and up to 250,000,000 rows (as that term is described in the Documentation) made available to the Application for querying, unless otherwise additional rights are expressly specified in the Documentation or a separate writing duly signed by ThoughtSpot. FOR ANY EVALUATION LICENSE, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN: **(A)** THE APPLICATION IS PROVIDED "AS-IS" WITHOUT WARRANTY OR SUPPORT OF ANY KIND, EXPRESS OR IMPLIED; **(B)** THOUGHTSPOT MAY TERMINATE CUSTOMER'S LICENSE AT ANY TIME, FOR ANY REASON AND WITHOUT LIABILITY OF ANY KIND; AND **(C)** THOUGHTSPOT WILL HAVE NO INDEMNITY OBLIGATION HEREUNDER, AND THOUGHTSPOT'S TOTAL LIABILITY WITH RESPECT TO THE EVALUATION LICENSE WILL NOT EXCEED US\$ 500. This Section 2.4 will supersede any conflicting terms in this Agreement with respect to any Evaluation License.

### 3. Permissions and Limitations.

- 3.1. **License.** Subject to the terms and conditions of this Agreement and payment of all fees due, during the applicable License Term ThoughtSpot grants to Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferable, worldwide license to install, use, and execute the Application to the extent expressly specified in the applicable Marketplace order (including with regard to the rows of capacity or other licensing metric), solely for Customer's internal business operations in accordance with the Documentation (including with regard to compatible hardware devices or software environments). Notwithstanding the foregoing, to the extent that a purchased Application license is identified as "non-production," then such Application's use must be limited to a non-production environment. To the extent that Customer grants access to the Application to any third party (including a Customer Affiliate), Customer will be wholly responsible for compliance with this Agreement as if such third party were Customer.
- 3.2. **Support.** ThoughtSpot will provide Support for the Application pursuant to the Support Guide during the License Term. The Application does not provide a source of record for data, archival service, or data backup service, nor does it replace the need for Customer to maintain regular data backups or redundant data archives. THOUGHTSPOT HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.
- 3.3. **No Data Processing.** The Application will be hosted on the Instance and not in a ThoughtSpot environment. To enable ThoughtSpot to provide Support, Customer may choose to provide ThoughtSpot with temporary remote access to view Customer's Application environment pursuant to Customer's instructions provided to ThoughtSpot and subject to the confidentiality provisions of Section 5.1 (*Confidentiality*) of this Agreement. The parties agree that ThoughtSpot does not want or need, and Customer will not transmit to ThoughtSpot or require that ThoughtSpot receive, any Customer Data.
- 3.4. **Restrictions.** Customer will not (and has no license to): **(a)** use the Application or Documentation except as permitted in this Agreement; **(b)** disassemble, decompile, port, reverse compile, reverse engineer, translate, or otherwise attempt to separate any of the components of the Application or reconstruct any Application, or attempt to derive or obtain any source code, structure, algorithms, processes, techniques, technologies, know-how, or ideas embodied by, underlying, or contained in the Application; **(c)** sell, license, sublicense, rent, lease, encumber, lend, distribute, transfer, or provide a third party with access to the Application, on a hosted basis, as a managed service provider, for time sharing, or otherwise; **(d)** alter, modify, or create derivative works of the Application (including the underlying source code) in any way, including through customization, translation, or localization; **(e)** remove or alter any



trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Application or Documentation; **(f)** circumvent or remove by any means any click-accept or copy protection used by ThoughtSpot in connection with the Application, or use user credentials not supplied by ThoughtSpot; **(g)** use the Application or Documentation to conduct competitive research, to develop a product that is competitive with any ThoughtSpot product offering, or otherwise if Company is a competitor to ThoughtSpot, or to assert, authorize, assist, or encourage a third-party to assert, against ThoughtSpot or any of its affiliates, customers, vendors, business partners, or licensors, any patent or other IPR claim regarding ThoughtSpot products or services; **(h)** publicly disseminate any performance or security vulnerability test (including a penetration test) results or analysis related to or derived from the Application; **(i)** use the Application or Documentation to create a product that converts Application file formats for use with data analysis, machine learning, or data visualization software that is not the property of ThoughtSpot; or **(j)** install the Application on any computer or other device other than on the Instance to which it was provisioned by the Marketplace installation process. Customer will not cause, encourage, or permit any other person or entity under its control from taking any actions that Customer is prohibited from taking under this Agreement. Before Customer engages in any of the foregoing acts that it believes it may be entitled to, it will provide ThoughtSpot with 30 days' prior notice to [legal@thoughtspot.com](mailto:legal@thoughtspot.com), and provide reasonably requested information to allow ThoughtSpot to assess Customer's claim. ThoughtSpot may, in its discretion, provide alternatives that reduce adverse impacts to ThoughtSpot's IPR or other rights.

- 3.5. **Open Source Components.** The Application may include one or more of the open source software components listed in the ThoughtSpot open source attribution file, which ThoughtSpot will make available to Customer on request. The open source attribution file contains open source license disclosures and pertinent terms.

#### 4. Warranties.

- 4.1. **Application.** ThoughtSpot warrants that the Application will, under normal use, substantially conform to the specifications in the Documentation for 90 consecutive days from the date of the initial download. To submit a warranty claim, Customer must request Support and reference this Section 4.1. ThoughtSpot will use commercially reasonable efforts to cause the Application to conform to the specifications in the Documentation at no charge to Customer, or if ThoughtSpot determines such remedy to be impracticable, either party may terminate this Agreement and Customer will receive a refund of any unused prepaid Application fees covering the remaining License Term following the effective date of termination. This warranty will not apply to: **(a)** use of the Application other than as described in the Documentation; **(b)** modification or use of an unsupported version of the Application by anyone but ThoughtSpot; or **(c)** failure caused by a product not provided or expressly approved by ThoughtSpot or its agents. **This Section 4.1 sets forth Customer's exclusive rights and remedies (and ThoughtSpot's entire liability) in relation to the warranty in this Section 4.1.**

- 4.2. **Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES UNDER SECTION 4 (*WARRANTIES*) AND TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, THOUGHTSPOT (ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS) AND THOUGHTSPOT AFFILIATES: **(A)** DO NOT MAKE, AND EXPRESSLY DISCLAIM, ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE APPLICATION AND SUPPORT (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF THOUGHTSPOT KNOWS OR SHOULD HAVE KNOWN SUCH PURPOSE), TITLE, AND NON-INFRINGEMENT; **(B)** PROVIDE THE APPLICATION AND SUPPORT "AS IS" AND "AS AVAILABLE"; AND **(C)** WITHOUT LIMITING THE FOREGOING CLAUSES (A) AND (B), MAKE NO (AND EXPRESSLY DISCLAIM) ANY WARRANTY THAT THE APPLICATION AND ANY USE THEREOF, WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, COMPATIBLE WITH ANY PARTICULAR ENVIRONMENT, OR FREE FROM DEFECTS, VIRUS, OR ERRORS (OR THAT ANY ERRORS WILL BE CORRECTED).

#### 5. Proprietary Rights.

- 5.1. **Confidentiality.** For the term of this Agreement, and surviving expiration or termination of this Agreement for up to three (3) years after disclosure of the Confidential Information, the party receiving Confidential Information (the "Recipient") from the other party (the "Discloser") will use it solely to perform the rights and obligations provided under this Agreement, and not for any other purpose without the Discloser's prior written consent. The Recipient will hold in confidence, and not disclose to any third party, any of the Discloser's Confidential Information. The Recipient will use at least the same degree of care in handling the Discloser's Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care. The Recipient will notify the Discloser immediately on becoming aware of any unauthorized use or release of the Discloser's Confidential Information. The Recipient may disclose the Discloser's Confidential Information to those of its Affiliates, directors, advisors, employees, or contractors





(collectively, “**Representatives**”) who have a need to know such Confidential Information to perform under or in relation to this Agreement, but only if such Representatives are subject to a binding, written agreement no less protective of the Discloser than the confidentiality terms of this Agreement. The Recipient will, at the Discloser’s request or on termination of this Agreement, return all originals, copies, and summaries of Confidential Information and other tangible materials and devices provided to the Recipient as Confidential Information, or at the Discloser’s option, certify destruction of same (although nothing in this sentence may be construed to require ThoughtSpot to purge archived backup media). Nothing under this Agreement or trade secret Law may be construed to restrict or limit ThoughtSpot’s right to perform (or assign any personnel to perform) services for any other party or to use any information incidentally retained in the unaided memories of its personnel. The Recipient’s obligations under this Section 5.1 will not apply to Confidential Information that is required be disclosed by the Recipient to comply with a court order or Law, but only if the Recipient promptly notifies the Discloser to enable the Discloser to seek a protective order or other appropriate remedy, and takes commercially reasonable and lawful actions to avoid or minimize the extent of, and to obtain confidential treatment for, any such disclosure.

- 5.2. **Ownership.** As between the parties, Customer, Customer Affiliates, and its and their suppliers and licensors will retain all right, title, and interest in and to all IPR in Customer Data. As between the parties, ThoughtSpot, ThoughtSpot Affiliates, and its and their suppliers and licensors own all right, title, and interest in and to all IPR in (and in all copies of) the Application and Documentation, regardless of the form or media in or on which the original or other copies may subsequently exist. Except for the limited licenses expressly granted in this Agreement, ThoughtSpot reserves all, and does not grant any other, rights (express, implied, by estoppel, through exhaustion, or otherwise). The Application is licensed and not sold.
- 5.3. **Feedback.** ThoughtSpot encourages Customer to provide suggestions, proposals, ideas, recommendations, or other input regarding the Application (collectively, “**Feedback**”). To the extent that Customer provides such voluntary Feedback to ThoughtSpot, ThoughtSpot may use it for any purpose without obligation of any kind.

## 6. Third-Party Claims.

- 6.1. **Obligation.** ThoughtSpot will defend Customer from and against any claim or demand made by an unaffiliated third party alleging that the Application, when used as authorized in this Agreement and unmodified by Customer, infringes IPR owned by such third party and will indemnify Customer from and against any damages and costs awarded against Customer or agreed in settlement by ThoughtSpot (including reasonable attorneys’ fees) resulting from such claim or demand. If Customer’s use of the Application is (or in ThoughtSpot’s opinion is likely to be) enjoined, if required by settlement or if ThoughtSpot determines such actions are reasonably necessary to avoid material liability, ThoughtSpot may, in its sole discretion: **(a)** substitute products of substantially similar functionality; **(b)** procure for Customer the right to continue using the Application; or if (a) and (b) are not commercially reasonable, **(c)** terminate this Agreement and refund to Customer the fees paid by Customer for the remaining portion of the License Term following the date of termination. ThoughtSpot will have no obligation in this Section 6.1 for any claim or demand to the extent arising from use of the Application combined or integrated with other products, processes, or materials where the infringement would not have arisen but for such combination or integration or use of an unsupported version.
- 6.2. **Process.** ThoughtSpot’s indemnification obligations are expressly conditioned on Customer: **(a)** providing prompt notification of any actual or threatened claim or demand; **(b)** giving ThoughtSpot sole control of the defense and any related settlement negotiations; and **(c)** providing all necessary cooperation with the defense at ThoughtSpot’s reasonable request and expense. Failure by Customer to notify ThoughtSpot of a claim under this Section 6 will not relieve ThoughtSpot of its obligations therein; however ThoughtSpot will not be liable for any litigation expenses that Customer incurred prior to the time when notice is given or for any damages or costs resulting from any material prejudice caused by the delay or failure to provide notice to ThoughtSpot in accordance with this Section 6. ThoughtSpot will not stipulate, acknowledge, or admit fault or liability on Customer’s behalf, or publicize any settlement, without Customer’s prior written consent (which will not be unreasonably withheld, conditioned, or delayed). Any indemnification obligation in this Section 6 will not apply if Customer settles or makes any admission with respect to a claim without ThoughtSpot’s prior written consent. **This Section 6 (Third-Party Claims) states ThoughtSpot’s entire liability and Customer’s exclusive remedy for third-party claims and third-party actions.**

## 7. Limitations of Liability.

- 7.1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY’S TOTAL, CUMULATIVE LIABILITY ARISING IN ANY WAY OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE



THEORY, WILL BE LIMITED TO DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE IN AN AMOUNT NOT EXCEEDING: **(A)** FOR ANY GIVEN CLAIM, THE AMOUNTS PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE APPLICATION PURCHASE GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE MOST RECENT EVENT GIVING RISE TO THE LIABILITY; AND **(B)** FOR ALL SUCH CLAIMS IN THE AGGREGATE, US\$ 500,000.

- 7.2. **Exclusions.** TO THE EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR THOUGHTSPOT WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES, OR FOR DAMAGES RELATING TO: **(A)** LOSS OR INACCURACY OF, OR DAMAGE TO, CUSTOMER DATA; **(B)** LOST REVENUE OR PROFITS; **(C)** LOSS OF BUSINESS; **(D)** DAMAGE TO GOODWILL; **(E)** WORK STOPPAGE; **(F)** IMPAIRMENT OF OTHER ASSETS; OR **(G)** INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH THEY ARE SOUGHT, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, FORESEEABLE OR NOT, AND WITHOUT REGARD TO WHETHER A PARTY HAS BEEN ADVISED SUCH DAMAGES ARE POSSIBLE.
- 7.3. **Applicability.** The provisions of Sections 7.1 (*Limitation of Liability*) and 7.2 (*Exclusions*) do not apply to: **(a)** infringement, misappropriation, or other violation by a party of the other party's IPR; **(b)** breach by a party of its obligations under Section 5.1 (*Confidentiality*) (but excluding claims or liability related to Customer Data); **(c)** payments to a third party arising from obligations under Section 6 (*Third-Party Claims*); or **(d)** tort actions (separate and distinct from a cause of action for a breach of this Agreement) for a party's gross negligence or willful misconduct. The parties, and not their Affiliates, suppliers, or licensors, are wholly responsible for any liabilities hereunder.

## 8. Proper Conduct.

- 8.1. **Compliance with Law.** Each party will comply with all Law in its performance of this Agreement.
- 8.2. **Responsibility for Security and Integrity of Customer Data.** The Application will be executed by Customer in Customer's own datacenter environment. Customer is solely responsible for adequately duplicating, documenting, and protecting its Customer Data, and ThoughtSpot assumes no liability for Customer's failure to do so. ThoughtSpot's access to Customer Data in the performance of Support is subject to the following terms: **(a)** Customer is solely responsible for both the duration and configuration of the scope of access to Customer Data; **(b)** Customer is solely responsible for access control management and must ensure that any access to Customer Data that Customer grants to ThoughtSpot is limited to read-only access (unless otherwise required to perform Support); **(c)** Customer will not grant ThoughtSpot access to any non-ThoughtSpot environment; **(d)** ThoughtSpot may only access Customer Data through secure Customer workstations or networks that are provided, monitored, managed, configured, supported and maintained by Customer; **(e)** Customer must provide unique user credentials to any ThoughtSpot resource that requires access to Customer Data as described herein; **(f)** such credentials noted above will be solely managed by Customer and Customer will be responsible for any consumption generated from the supplied credentials; and **(g)** Customer will limit access to any Customer Data that is unencrypted or contains personal data and, if such access is granted, Customer shall use reasonable efforts to mask any personal or sensitive data.
- 8.3. **Export Compliance.** Each party will comply with local and foreign export control Law, including U.S. export control Law. The Application is subject to U.S. Export Administration Regulations ("EAR") and Customer will comply with EAR. Without limiting the foregoing, Customer represents and warrants that: **(a)** it is not located in, and will not use any Application from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); **(b)** Customer will not use the Application in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and **(c)** Customer is not prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, Customer is responsible for complying with any local Law that may impact Customer's right to import, export, or use the Application or any of them.
- 8.4. **U.S. Government Use.** The Application provided under this Agreement is commercial computer software developed exclusively at private expense. Unless otherwise set forth in this Agreement, use, duplication, and disclosure by civilian agencies of the U.S. Government will not exceed those minimum rights set forth in FAR 52.227-19(c) or successor regulations. Use, duplication, and disclosure by U.S. Department of Defense agencies is subject solely to the software license terms contained in this Agreement, as stated in DFARS 227.7202 or successor regulations. U.S. Government rights will apply only to the specific agency and program for which the Application is obtained.

## 9. Term and Termination.



- 9.1. **Term and Termination.** This Agreement begins on the Effective Date and continues until expiration of the License Term to which it applies. Either party may terminate this Agreement in its entirety: **(a)** immediately on written notice if the other becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors; or **(b)** immediately on written notice if the other party materially breaches this Agreement and has not cured the breach within 30 days after notice of the breach from the non-breaching party.
- 9.2. **Effect.** On termination of this Agreement for any reason or expiration of the License Term without renewal: **(a)** all use rights and access granted by ThoughtSpot will automatically terminate; **(b)** the parties will destroy all copies of Confidential Information in their possession, custody, or control; and **(c)** if requested, either party will certify such return or destruction in writing. Within 30 days after the effective date of proper termination for ThoughtSpot's material breach, ThoughtSpot will refund any prepaid fees received by ThoughtSpot covering that part of the License Term for the affected license, if any, remaining after such effective date. If termination is for Customer's breach, all remaining amounts are accelerated and deemed due and payable as of the termination date.
- 9.3. **Survival.** Except as otherwise provided in this Agreement, the following will survive termination of this Agreement: Sections 1 (*Definitions*), 2.2 (*Invoices and Payment*), 2.3 (*Taxes*), 2.4 (*Evaluation Access*), 3.4 (*Restrictions*), 4.3 (*Disclaimers*), 5 (*Proprietary Rights*), 6 (*Third-Party Claims*) (for one year following the date of termination), 7 (*Limitations of Liability*), 9 (*Term and Termination*), and 10 (*General*).
- 9.4. **Suspension.** In addition to other rights or remedies in this Agreement, ThoughtSpot reserves the right to suspend provision of the Application if: **(a)** Customer has a payment 30 or more days overdue; **(b)** ThoughtSpot deems such suspension necessary as a result of Customer's breach of Section 3.4 (*Restrictions*); **(c)** ThoughtSpot reasonably determines suspension is necessary to avoid material harm to ThoughtSpot or the Marketplace provider; or **(d)** required by Law or at the request of governmental authorities.
- 10. General.**
- 10.1. **Announcements.** Neither party will issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to this Agreement, or referencing the other party, nor use the other party's logo, trademarks and service marks, without the other party's prior written approval.
- 10.2. **Waiver; Amendment.** No delay or failure by either party to exercise any right under this Agreement will waive that or any other right. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party. Any amendment to this Agreement must be in writing and signed by authorized representatives of both parties.
- 10.3. **Assignment.** Neither party will assign, delegate, or otherwise transfer this Agreement, or any of its rights or duties under it, to a third party without the other's prior written consent, which will not be unreasonably withheld, conditioned, or delayed. Any purported transaction in breach of this Section 10.3 is material and is void. Each party is, however, deemed to have consented to any such assignment, delegation, or transfer to: **(a)** an Affiliate; or **(b)** any entity that acquires all or substantially all of its capital stock or assets related to this Agreement through purchase, merger, consolidation, or otherwise, but only if such entity is not a direct competitor of the non-assigning party. Subject to the foregoing, this Agreement will bind and benefit the parties, their successors, and permitted assigns.
- 10.4. **Notices.** All notices and other communications under this Agreement will be: **(a)** in writing; **(b)** in English; and **(c)** deemed given when delivered (or the first business day after delivery with confirmation of receipt, for notices permitted by email). Notices under this Agreement will be sufficient only if: **(i)** personally delivered; **(ii)** delivered by a major commercial rapid delivery courier service with tracking capabilities; **(iii)** mailed by certified or registered mail, return receipt requested, to a party at the address provided via the Marketplace (or at such address as the recipient has notified the other party of, before notice was sent); or **(iv)** sent via email, if the recipient's email address is provided in this Agreement (but email will not be sufficient for notices regarding a claim, demand, or alleged breach).
- 10.5. **Dispute Resolution.** This Agreement and performance under it will be governed by the substantive laws of the State of California, disregarding its conflict of law rules. If federal jurisdiction exists over any suit, action, or proceeding arising out of or relating to this Agreement, the parties consent to exclusive jurisdiction and venue in San Francisco, California. If not, the parties consent to exclusive jurisdiction and venue in the California state courts sitting in Santa Clara County, California. In any such suit, action, or proceeding, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including those on appeal or in a bankruptcy action. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.



- 10.6. **Force Majeure.** Neither party will be responsible for any delay or failure in its performance of any obligation under this Agreement (other than payment) due to causes beyond its reasonable control, but only if the party invoking this Section 10.6 promptly notifies the other party and resumes performance promptly when conditions allow it to do so.
- 10.7. **Relationship.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. There are no third-party beneficiaries to this Agreement. ThoughtSpot's licensors will have no liability of any kind under this Agreement. ThoughtSpot's liability with respect to any third-party software embedded in the Application will be subject to Section 7 (*Limitations of Liability*).
- 10.8. **Severability.** If any part of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that part will be deemed reformed to effectuate the parties' intentions, and the rest of this Agreement will remain in full force and effect.
- 10.9. **Execution and Construction.** This Agreement is effective only when executed by facsimile, via electronic signature service, or in counterparts, which together will be deemed the entire agreement. Such execution requirement is, without limitation, a material term. Section headings are intended solely for convenience and will not affect the meaning of this Agreement. This Agreement will be interpreted according to its plain meaning without presuming it should favor either party. Unless stated or context requires otherwise: **(a)** all internal references are to this Agreement and its parties; **(b)** first-level section references (e.g., "as provided in Section 1") includes all subordinate subsections (e.g., 1.1, 1.2, etc.) within that section; **(c)** all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; **(d)** "days" means calendar days; **(e)** "may" means that the applicable party has a right, but not a concomitant duty; **(f)** "notify" means to give notice under (and "notice" means a notice that complies with) Section 10.4 (*Notices*); **(g)** "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; **(h)** URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; **(i)** lists of examples following "including", "e.g.", "such as", "excludes", "for example", or similar words are deemed to include "without limitation"; **(j)** the word "or" is deemed to be an inclusive "or"; and **(k)** a party's choices under this Agreement are in its sole discretion. Any translation of the English-language version of this Agreement is for convenience only, and the English-language version will govern. If Customer is domiciled in Canada, the parties expressly wish to execute this Agreement and any associated documentation in English.
- 10.10. **Entire Agreement.** This Agreement sets forth the complete and exclusive agreement between the parties relating to its subject matter and supersedes all prior oral and written agreements, understandings, and communications (including any requests for quote, requests for information, requests for proposal, or the like), click-through agreements and embedded end-user license agreements, regarding its subject matter. Purchase orders issued by Customer are for Customer's internal purposes only and ThoughtSpot rejects, and in the future is deemed to have rejected, any purchase order terms. Invoices issued by ThoughtSpot will be effective solely to specify the charges for the Application licenses. All other terms and conditions printed or included on, or referenced in, such purchase orders, invoices, and other ordering documents or correspondence, that purport to add to or modify the terms of this Agreement are expressly rejected by ThoughtSpot and will be of no force or effect.