

ThoughtSpot for AWS Subscription Agreement

BY CHECKING THE ACCEPTANCE BOX OR ACCESSING OR USING ALL OR ANY PORTION OF THOUGHTSPOT FOR AWS (DEFINED BELOW), YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON THOUGHTSPOT'S WEBSITE AT WWW.THUGHTSPOT.COM/LEGAL (OR SUCCESSOR URL). IF CUSTOMER DOES NOT AGREE TO ALL OF THESE TERMS, CUSTOMER MAY NOT ACCESS OR USE THOUGHTSPOT FOR AWS. YOU AGREE THAT ALL USE IS SUBJECT TO ANY TERMS OF SERVICE REFERENCED HEREIN BY URL.

This ThoughtSpot for AWS Subscription Agreement, together with its incorporated terms and conditions ("**Agreement**") is between ThoughtSpot and the customer (individual or entity) that has purchased a subscription to ThoughtSpot for AWS ("**Customer**" or "**you**" or "**your**"). "**ThoughtSpot**" means the ThoughtSpot entity set forth in the applicable Order Form (defined below). If you are an individual purchasing or using ThoughtSpot for AWS on behalf of a corporation, partnership or other entity, then that entity will be the Customer and you represent and warrant that you are authorized to enter into this Agreement on behalf of such entity and bind such entity to the terms of this Agreement. The "**Effective Date**" of this Agreement is the date which is the earlier of: (a) Customer's initial access to ThoughtSpot for AWS through any online provisioning, registration or order process; or (b) the effective date of the first Order Form referencing this Agreement.

This Agreement incorporates by this reference all of the numbered sections below as well as the terms and conditions of all Order Forms signed by authorized representatives of both parties and the Support Guide (defined below)..

Evaluation Users: If you receive free, trial or evaluation access to ThoughtSpot for AWS, you are deemed a "Customer" under this Agreement except that you are subject to the additional restrictions and limitations set forth in Section 3.5 (Evaluation Access) below.

This Agreement only applies to ThoughtSpot for AWS and does not grant Customer rights to any other ThoughtSpot software or service, which are made available under separate agreements.

From time to time, ThoughtSpot may modify this Agreement. Unless otherwise specified by ThoughtSpot, changes become effective for existing subscription Customers upon renewal of the then-current Subscription Term (defined below). ThoughtSpot will use reasonable efforts to notify Customer of the changes through communications through AWS, email, or other means. Customer may be required to click to accept the modified Agreement before using ThoughtSpot for AWS in a renewal Subscription Term, and in any event continued use of ThoughtSpot for AWS during the renewal Subscription Term will constitute Customer's acceptance of the version of the Agreement in effect at the time the renewal Subscription Term begins.

Each party expressly agrees that this Agreement is legally binding upon it.

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. "**Authorized User**" means those uniquely identified individuals who are authorized by Customer to access and use ThoughtSpot for AWS.
- 1.3. "**Claim**" means any suit, claim, action, or demand, in each case solely to the extent brought by an unaffiliated third party.
- 1.4. "**Confidential Information**" means: (a) the ThoughtSpot for AWS (which is ThoughtSpot's Confidential Information); (b) any information of a party that is disclosed in writing or orally and designated confidential at time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party should reasonably understand to be disclosing party's confidential information; and (c) the terms of this Agreement, any Order Form, and any amendment or attachment to any of these (which will be deemed Confidential Information of both parties).
- 1.5. "**Customer Data**" means electronic data uploaded by or for Customer or Customer's agents, employees, or contractors, and processed in the ThoughtSpot for AWS.
- 1.6. "**Documentation**" means the then-current, published operating instructions, user manuals, release notes, and help files made available by ThoughtSpot to Customer intended for use in connection with the ThoughtSpot for AWS.
- 1.7. "**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.

- 1.8. “**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.
- 1.9. “**Order Form**” means an ordering document signed by the authorized representatives of Customer and ThoughtSpot.
- 1.10. “**Professional Services**” means consulting, implementation, configuration, integration, or training services provided by ThoughtSpot or its authorized service providers.
- 1.11. “**ThoughtSpot for AWS**” means the ThoughtSpot software-as-a-service offering available on Amazon Web Services (“**AWS**”) ordered by Customer under an Order Form.
- 1.12. “**Subscription Term**” means the period of authorized access to and use of the ThoughtSpot for AWS, as set forth in an Order Form.
- 1.13. “**Support**” means technical support and maintenance for ThoughtSpot for AWS, as set forth in the Support Guide.
- 1.14. “**Support Guide**” means the ThoughtSpot Support and Maintenance Program Guide at <http://www.thoughtspot.com/legal/>.

2. Orders.

- 2.1. **Orders and Payment.** Upon execution by the parties, each Order Form is non-cancellable and, except as otherwise provided in this Agreement, non-refundable. Prices stated in each Order Form are final, and Professional Services are separately ordered from (and not required for use of) ThoughtSpot for AWS. Each Subscription Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Subscription Term. Professional Services fees are invoiced on a time and materials basis, monthly in arrears. Customer will pay each invoice within 30 days after the invoice date. If Customer issues a purchase order, then it shall be for the full amount of the Order Form. Any such purchase order submitted by Customer is for its internal purposes only, and ThoughtSpot rejects, and in the future is deemed to have rejected, any purchase order’s terms to the extent they add to or conflict in any way with this Agreement or the applicable Order Form, and such additional or conflicting terms will have no effect. Late payments will accrue interest at a rate of 1.5% per month or the legal maximum interest rate, whichever is lower. Customer will cure a delinquency in payment of any amounts owed under this Agreement within 30 days from the date of ThoughtSpot’s delinquency notice. ThoughtSpot may suspend the delivery of Professional Services while any payment is delinquent. 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 any other claim Customer might have against ThoughtSpot or any other party. All terms of this Section 2 apply except as may be expressly stated otherwise in the applicable Order Form or elsewhere in this Agreement.
- 2.2. **Taxes.** All payments required by this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments, including sales and use taxes, value-added taxes (“**VAT**”), goods and services taxes (“**GST**”), excise, business, service, and similar transactional taxes imposed by any jurisdiction, and the interest and penalties on any and all of these (collectively, “**Taxes**”). Customer is solely liable for and will pay all Taxes associated with its purchase of, payment for, access to, or use of, ThoughtSpot for AWS. For the avoidance of doubt, Taxes will not be deducted from payments to ThoughtSpot, except as required by 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. Each party is solely liable for and will pay taxes imposed on its net income. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, it will include its tax exemption number on, and provide a tax exemption certificate on execution of the Order Form and, after receipt of valid evidence of exemption, ThoughtSpot will not charge Customer any Taxes from which it is exempt. If ThoughtSpot is required to invoice or collect Taxes associated with Customer’s purchase of, payment for, access to, or use of, ThoughtSpot for AWS, ThoughtSpot will invoice Customer for those Taxes, itemized where required by Law. Customer will provide to ThoughtSpot its VAT or GST identification number(s) on the Order Form for: **(a)** the country where Customer has established its business; and **(b)** any other country where Customer has a fixed establishment. Customer will use the ordered ThoughtSpot for AWS for Customer’s business use in the foregoing location(s) in accordance with the provided VAT or GST identification number(s).
- 2.3. **Suspension of Service.** If Customer’s account is 30 days or more overdue, in addition to any of its other rights or remedies (including without limitation, termination as set forth herein), ThoughtSpot reserves the right to suspend Customer’s access to ThoughtSpot for AWS without liability until such amounts are paid in full.

3. Access and Restrictions.

- 3.1. **ThoughtSpot for AWS.** Subject to the terms of this Agreement and payment of all fees due, ThoughtSpot authorizes Customer to access and use ThoughtSpot for AWS during the Subscription Term stated in the applicable Order Form, solely for use by Authorized Users for Customer’s internal business purposes in accordance with the Documentation.
- 3.2. **Authorized Users.** Authorized Users will receive unique username and password credentials to access ThoughtSpot for AWS. User credentials may not be shared between Authorized Users and Customer must ensure that all Authorized Users keep user credentials strictly confidential. Each Authorized User’s access rights may be further specified in the applicable Order Form. Customer may permit its contractors who are not competitors of ThoughtSpot and Affiliates to access ThoughtSpot for AWS as Authorized Users in accordance with this Agreement, provided that Customer will remain liable for the acts and omissions of its contractors and Affiliates.

- 3.3. **Technical Support.** During the Subscription Term, ThoughtSpot will provide Support for the ThoughtSpot for AWS pursuant to the Support Guide.
- 3.4. **Restrictions.** Customer will not (and will not allow any third party to): **(a)** use ThoughtSpot for AWS or Documentation except as permitted in this Agreement; **(b)** copy, use other than with the AWS instance on which it was installed, disassemble, decompile, port, reverse compile, reverse engineer, translate, or otherwise attempt to copy or separate any of the components of ThoughtSpot for AWS or reconstruct any ThoughtSpot for AWS, or attempt to derive or obtain any source code, structure, algorithms, processes, techniques, technologies, know-how, or ideas embodied by, underlying, or contained in ThoughtSpot for AWS; **(c)** sell, license, sublicense, rent, lease, encumber, lend, distribute, transfer, host, manage for third parties, or otherwise provide a third party with access to the ThoughtSpot for AWS except as expressly set forth in an Order Form; **(d)** alter, modify, or create derivative works of ThoughtSpot for AWS (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 ThoughtSpot for AWS or Documentation; **(f)** publicly disseminate performance information from any source related to ThoughtSpot for AWS; **(g)** use ThoughtSpot for AWS to develop a product that is competitive with ThoughtSpot for AWS or other ThoughtSpot product offerings; **(h)** enable access to ThoughtSpot for AWS for a greater number of Authorized Users than the sum quantity of subscriptions purchased in the applicable Order Form; **(i)** reassign subscription access rights between Authorized Users so frequently as to enable a single subscription to be shared among multiple users; or **(j)** use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation. 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.
- 3.5. **Evaluation Access.** If ThoughtSpot has made available to you free, trial or evaluation access to ThoughtSpot for AWS ("**Evaluation Access**"), your access is limited to evaluating ThoughtSpot for AWS to determine whether to purchase a subscription from ThoughtSpot. You may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional or for-profit purposes. Evaluation Access is limited to 30 days from the date you activate Evaluation Access, unless otherwise specified by ThoughtSpot in the Order Form. ThoughtSpot has the right to terminate Evaluation Access at any time. Unless you purchase a subscription for ThoughtSpot for AWS, upon any such termination or expiration your Evaluation Access will cease and you will no longer have access to any Customer Data used in connection with Evaluation Access. If Customer purchases a subscription to ThoughtSpot for AWS, all of the terms and conditions in this Agreement will apply to such purchase and the use of ThoughtSpot for AWS. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THOUGHTSPOT WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT OR OBLIGATIONS WITH RESPECT TO EVALUATION ACCESS.
- 4. Customer Data.**
- 4.1. **General.** Customer is solely responsible for the accuracy and content of all Customer Data. Customer represents and warrants to ThoughtSpot that: **(a)** you have sufficient rights in the Customer Data to authorize ThoughtSpot to process, distribute and display the Customer Data as contemplated by this Agreement and the Documentation; and **(b)** Customer's use of ThoughtSpot for AWS 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, international communications and the exportation and transfer of technical or personal data.
- 4.2. **Protected Health Information.** Customer shall not upload to ThoughtSpot for AWS or publish thereon any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended) ("**HIPAA**"), or any similar federal or state laws, rules or regulations ("**Health Information**") and acknowledges that ThoughtSpot is not a Business Associate as that term is defined in HIPAA. ThoughtSpot will have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.
- 4.3. **Payment Card Data.** Customer shall not upload to ThoughtSpot for AWS or publish thereon any payment card information and Customer acknowledges that ThoughtSpot for AWS is not compliant with the Payment Card Industry Data Security Standards.
- 4.4. **Data Backup.** ThoughtSpot for AWS does not provide an archiving or data backup service. ThoughtSpot for AWS does not 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.
- 5. License.** Subject to the terms of this Agreement, Customer hereby grants to ThoughtSpot a nonexclusive, worldwide, royalty-free right to use, copy, store, transmit, distribute, perform and display (including publicly), modify and create derivative works of the Customer Data solely to the extent necessary to provide ThoughtSpot for AWS.
- 6. Intellectual Property.**
- 6.1. **Ownership.** 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) ThoughtSpot for AWS and Documentation, regardless of the form or media in or on which the original or other copies may subsequently exist. Except for the access and use rights granted in this Agreement, ThoughtSpot reserves all, and does not grant any other, rights (express, implied, by estoppel, through exhaustion, or otherwise). ThoughtSpot for AWS to which Customer is granted access is not sold, even if ThoughtSpot makes reference to words such as "sale" or "purchase" in the applicable Order Form or other documents.

- 6.2. **Customer Ownership.** As between the parties, Customer and its licensors will retain all right, title, and interest in and to all IPR in Customer Data.
- 6.3. **Feedback.** ThoughtSpot encourages Customer to provide suggestions, proposals, ideas, recommendations, or other input regarding ThoughtSpot for AWS (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.
7. **Confidentiality.**
- 7.1. **Use of Confidential Information.** For the term of this Agreement, and surviving expiration or termination of this Agreement for up to three years after disclosure of the Confidential Information, the party receiving Confidential Information (the “**receiving party**”) from the other party (the “**disclosing party**”) will use it solely to perform the rights and obligations provided under this Agreement, and not for any other purpose without the disclosing party’s prior written consent. Subject to Section 7.2 (*Exceptions*), the receiving party will not disclose to any third party any of the disclosing party’s Confidential Information. The receiving party will use at least the same degree of care in handling the disclosing party’s Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care. The receiving party will notify disclosing party immediately on becoming aware of any unauthorized use or release of the disclosing party’s Confidential Information. The receiving party may disclose the disclosing party’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 disclosing party than the confidentiality terms of this Agreement. The receiving party will, at the disclosing party’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 receiving party as Confidential Information, or at the disclosing party’s option, certify destruction of same (although nothing in this sentence may be construed to require either party to purge copies automatically archived in backup media that are not readily accessible for further use or review). 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) Professional Services for any other party or to use any information incidentally retained in the unaided memories of its personnel providing Professional Services.
- 7.2. **Exceptions.** The receiving party’s obligations under this Section 7 (*Confidentiality*) will not apply, and the receiving party will have no further obligations, with respect to any of the disclosing party’s Confidential Information that is: (a) generally known to the public at the time of disclosure or becomes generally known through no wrongful act of receiving party; (b) rightfully in the receiving party’s possession, or otherwise rightfully known by the receiving party, at the time of disclosure by the disclosing party and not subject to a confidentiality obligation; (c) required to be disclosed by the receiving party to comply with a court order, Law, or government regulations, but only if the receiving party promptly notifies disclosing party to enable the disclosing party 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; or (d) independently developed by the receiving party without use of, reference to, or reliance on the disclosing party’s Confidential Information.
- 7.3. **Publicity.** 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 without the other party’s prior written approval.
8. **Warranty**
- 8.1. **ThoughtSpot for AWS Warranty.** ThoughtSpot warrants, during the Subscription Term, that ThoughtSpot for AWS will, under normal use, substantially conform to the specifications in the Documentation. To submit any warranty claim, Customer must request Support and reference this Section 8.1. ThoughtSpot, at its option, will then use reasonable efforts within a reasonable time to cause ThoughtSpot for AWS to conform to the specifications in the Documentation. If the non-conformity persists without relief more than 30 days after notice of a warranty claim provided to ThoughtSpot under this Section 8.1, then Customer may terminate ThoughtSpot for AWS, and ThoughtSpot will refund to Customer any prepaid subscription fees covering that part of the applicable Subscription Term for the affected ThoughtSpot for AWS remaining after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to: (i) use of ThoughtSpot for AWS other than as described in the Documentation; (ii) modification or use of an unsupported version of ThoughtSpot for AWS by anyone but ThoughtSpot; or (iii) failure caused by a product not provided or expressly approved by ThoughtSpot or its agents. **This Section 8.1 sets forth Customer’s exclusive rights and remedies (and ThoughtSpot’s entire liability) in relation to the warranties in this Section 8.1.**
- 8.2. **Disclaimer of Warranties.** 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 THOUGHTSPOT FOR AWS AND SERVICES (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), PERFORMANCE, AND NON-INFRINGEMENT; (B) PROVIDE THOUGHTSPOT FOR AWS AND PROFESSIONAL SERVICES “AS IS” AND “AS AVAILABLE”; AND (C) WITHOUT LIMITING THE FOREGOING CLAUSES (A) AND (B), MAKE NO (AND EXPRESSLY DISCLAIM) ANY WARRANTY THAT THOUGHTSPOT FOR AWS, PROFESSIONAL SERVICES, AND ANY USE OF EITHER, WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, COMPATIBLE WITH ANY PARTICULAR ENVIRONMENT, OR FREE FROM DEFECTS, VIRUS, OR ERRORS (OR THAT ANY ERRORS WILL BE CORRECTED).

9. Limitations of Liability.

- 9.1. **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 THOUGHTSPOT FOR AWS AND PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE MOST RECENT EVENT GIVING RISE TO THE LIABILITY; AND **(B)** US\$ 500,000 FOR ALL SUCH CLAIMS IN THE AGGREGATE.
- 9.2. **Exclusions.** TO THE EXTENT PERMITTED BY LAW, NEITHER THOUGHTSPOT NOR CUSTOMER 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, 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.
- 9.3. **Gross Negligence; Willful Misconduct.** As provided by Law, nothing in this Agreement is intended or may be construed to limit a party's liability in an action in tort (separate and distinct from a cause of action for a breach of this Agreement) for a party's gross negligence or willful misconduct.

10. Third-Party Claims.

- 10.1. **ThoughtSpot Obligation.** Subject to the limitations in this Section 10 (*Third-Party Claims*), ThoughtSpot will: **(a)** defend Customer and Customer Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that ThoughtSpot for AWS accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; and **(b)** pay any settlement amount or any court-ordered award of damages to the extent arising from such Claim.
- 10.2. **Mitigation.** If any Claim alleges any part of ThoughtSpot for AWS infringes any third-party IPR, ThoughtSpot may: **(a)** contest the Claim; **(b)** obtain permission from the claimant for Customer's continued use of ThoughtSpot for AWS; **(c)** avoid such Claim by replacing or modifying Customer's access to and use of ThoughtSpot for AWS with a substantially similar ThoughtSpot for AWS; or, if ThoughtSpot determines in its sole discretion (after the exercise of commercially reasonable efforts to perform in accordance with the foregoing options (a), (b), or (c)) that options (a), (b), and (c) are not commercially practicable, then **(d)** terminate Customer's access to the affected ThoughtSpot for AWS on 60 days' prior notice and refund to Customer any prepaid subscription fees covering that part of the applicable Subscription Term for such ThoughtSpot for AWS remaining after the effective date of termination.
- 10.3. **Limitations.** ThoughtSpot will have no obligation or liability for any Claim: **(a)** if ThoughtSpot for AWS was modified by any party other than ThoughtSpot (including Customer), if the alleged infringement relates to such modification; **(b)** if ThoughtSpot for AWS is or was combined or integrated with other products, processes or data not provided or authorized by ThoughtSpot and where the alleged infringement would not have arisen but for such combination; **(c)** if Customer is using an unsupported version of ThoughtSpot for AWS; **(d)** arising from Customer's unauthorized use of ThoughtSpot for AWS; or **(e)** based on IPR owned by Customer or its Affiliates.
- 10.4. **Customer Obligation.** Customer will: **(a)** defend ThoughtSpot and ThoughtSpot Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that Customer Data or a modification to ThoughtSpot for AWS made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than ThoughtSpot or a person acting at ThoughtSpot's direction (but only if the Claim would have been avoided by use of the unmodified ThoughtSpot for AWS), infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third party privacy rights; and **(b)** pay any settlement amount or any court-ordered award of damages, under the foregoing subsection (a) to the extent arising from such Claim.
- 10.5. **Process.** The obligations of ThoughtSpot and Customer under Section 10 (*Third-Party Claims*) are conditioned on the indemnified party: **(a)** notifying the indemnifying party promptly of any actual or threatened Claim; **(b)** giving the indemnifying party sole control of the defense of such Claim and any related settlement negotiations; and **(c)** cooperating and, at indemnifying party's reasonable request and expense, assisting in such defense. The indemnifying party will not stipulate, acknowledge, or admit fault or liability on the indemnified party's behalf, or publicize any settlement, without the indemnified party's prior written consent (which will not be unreasonably withheld or delayed). **This Section 10 (*Third-Party Claims*) states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.**

11. Term and Termination.

- 11.1. **Term and Termination.** This Agreement begins on the Effective Date and continues until terminated under its terms. Either party may terminate this Agreement in its entirety: **(a)** on 30 days' prior notice to the other, if at the time of notice there are no Order

Forms in effect; **(b)** immediately on notice if the other party 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 **(c)** immediately on notice if the other party materially breaches this Agreement and does not cure such breach within 30 days after the other party's receipt of notice of the breach. Either party may terminate an Order Form on notice if the other party materially breaches this Agreement or the applicable Order Form for the affected service and does not cure the breach within 30 days after receiving notice of the breach from the nonbreaching party. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to ThoughtSpot for AWS even if the services are enumerated in the same Order Form.

- 11.2. **Effect.** On termination or expiration of ThoughtSpot for AWS, Customer will stop accessing and using, and ThoughtSpot will stop providing, ThoughtSpot for AWS and all related rights granted to Customer in this Agreement will terminate immediately, automatically, and without notice. ThoughtSpot will, within 30 days after the effective date of termination by Customer for ThoughtSpot's breach, refund to Customer any prepaid fees received by ThoughtSpot covering that part of the Subscription Term for the affected ThoughtSpot for AWS, if any, remaining after the effective date of termination. Within 30 days after the effective date of termination by ThoughtSpot for Customer's breach, Customer will pay all remaining amounts, if any, payable under this Agreement for the Subscription Term applicable to the terminated ThoughtSpot for AWS regardless of the due dates specified in the Order Form.
- 11.3. **Survival.** Except as otherwise provided in this Agreement, the following will survive termination of this Agreement: Sections 1 (*Definitions*), 2.1 (*Orders and Payment*), 2.2 (*Taxes*), 3.4 (*Restrictions*), 3.5 (*Evaluation Access*), 4.1 (*General*), 4.4 (*Data Backup*), 6 (*Intellectual Property*), 7 (*Confidentiality*), 9 (*Limitations of Liability*), 11 (*Term and Termination*), 12 (*Proper Conduct*), and 13 (*General*).

12. Proper Conduct.

- 12.1. **Compliance with Law.** Each party will comply with all Law in its performance of this Agreement.
- 12.2. **Export Compliance.** Each party will comply with local and foreign export control Law, including U.S. export control Law. ThoughtSpot for AWS 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 ThoughtSpot for AWS 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 ThoughtSpot for AWS 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 ThoughtSpot for AWS or any of them.
- 12.3. **U.S. Government Use.** ThoughtSpot for AWS provided under this Agreement is commercial computer software (as defined in Federal Acquisition Regulation ("**FAR**") 2.101 for civilian agency purchases and Department of Defense ("**DOD**") FAR Supplement ("**DFARS**") 252.227-7014(a)(1) for defense agency purchases) and ThoughtSpot services are commercial items. If the software is licensed or services acquired by or on behalf of a civilian agency, ThoughtSpot provides the software, its documentation, and any other technical data subject to this Agreement consistent with FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data). If software is licensed or services acquired by or on behalf of any DOD agency, ThoughtSpot provides the software, its documentation, and any other technical data subject to this Agreement consistent with DFARS 227.7202-3. If this is a DOD prime contract or DOD subcontract, the DOD agency Customer may acquire additional rights in technical data under DFARS 252.227-7015(b). This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

13. General.

- 13.1. **Use Verification.** ThoughtSpot may remotely review Customer's use of ThoughtSpot for AWS, and on ThoughtSpot's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement, and access to and use of ThoughtSpot for AWS. If ThoughtSpot determines that Customer has exceeded its permitted access and use rights to ThoughtSpot for AWS, ThoughtSpot will notify Customer and within 30 days thereafter Customer shall either: **(a)** disable any unpermitted use, or **(b)** purchase additional subscriptions commensurate with Customer's actual use.
- 13.2. **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.
- 13.3. **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 13.3 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.

- 13.4. **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 stated in this Agreement (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 or alleged breach). All notices except for ordinary business communications will be cc'd to the address stated in this Agreement.
- 13.5. **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.
- 13.6. **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 13.6 promptly notifies the other party and resumes performance promptly when conditions allow it to do so.
- 13.7. **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 ThoughtSpot for AWS will be subject to Section 9 (*Limitations of Liability*).
- 13.8. **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.
- 13.9. **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)** "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; **(g)** "notify" means to give notice under (and "notice" means a notice that complies with) Section 14.4 (*Notices*); **(h)** "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; **(i)** URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; **(j)** lists of examples following "including", "e.g.", "such as", "excludes", "for example", or similar words are deemed to include "without limitation"; **(k)** the word "or" is deemed to be an inclusive "or"; and **(l)** 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.
- 13.10. **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 will be effective solely to specify the quantities of ThoughtSpot for AWS and Professional Services ordered, and, to the extent such purchase orders are based on ThoughtSpot's Order Forms, the price. Invoices issued by ThoughtSpot will be effective solely to specify the charges for ThoughtSpot for AWS and Professional Services. 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.