

## MEMGRAPH OEM/ISV LICENCE AGREEMENT

Memgraph Limited is registered in England under registration 10195084 and has its registered office at 1st Floor, Suite B, One Suffolk Way, Sevenoaks, Kent, TN13 1YL, United Kingdom ("**Memgraph**").

Memgraph agrees to grant to you (the "**Customer**") access to the Software (as defined in Section 1.13) so that you can create Integrated Solutions for use and access by End Users in accordance with the Authorised Purpose (all as defined in Section 3.1.2) and provide support and services to you only if you accept and agree to be bound by the terms and conditions in this Memgraph OEM/ISV Licence Agreement (the "**Agreement**").

### 1. DEFINITIONS.

- 1.1. "**Applicable Laws**" means (i) all applicable laws, statutes and regulations, and (ii) regulatory policies, guidelines and industry codes (in each case having the force of law), which apply to the provision of the Software and Services according to the Agreement.
- 1.2. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer Data; Memgraph Confidential Information includes the Software and Services; and Confidential Information of each party includes the terms and conditions of the Agreement and all Orders (including pricing), as well as non-public business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.
- 1.3. "**Customer Data**" means business information or other data loaded by or for Customer or its End Users and/or processed by the Software.
- 1.4. "**Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time, as amended.
- 1.5. "**Derivate Work**" means any modification or enhancement made by Customer to the Software, whether in source code, binary executable, intermediate or other form created solely for an Authorised Purpose (as defined in Section 3.1).
- 1.6. "**End User(s)**" mean(s) any individual or unaffiliated third party to which Customer makes the Integrated Solution available regardless of the means (e.g. as an on premise solution; in a software as a service private or public cloud solution; or distributed through an OEM or ISV model) and whether or not the Integrated Solution is distributed.
- 1.7. "**End User Licence Agreement**" or "**EULA**" means the minimum licence terms as further described in **Schedule A** that Customer must furnish to and its End User(s) must accept as legally binding before having access to the Integrated Solution.
- 1.8. "**Effective Date**" means the date on which Customer executes and/or agrees to the Agreement and/or an Order referencing the Agreement.
- 1.9. "**Integrated Solution**" mean(s) Customer's application or hosted service that adds primary and significant functionality to the Software (as defined below) in an embedded solution that does not provide third parties (i.e. Customer's End Users) direct access to operate or control the Software itself, provided however, Customer at all times remains in compliance with the terms of the applicable licence grants under this Agreement and Memgraph has approved the Integrated Solutions prior to their first distribution to an End User. The permitted Integrated Solutions are listed in an Order.

- 1.10. **“Licensed Capacity”** means the maximum number of instances, GB, End Users or any other usage metric as set out in an Order.
- 1.11. **“Order Document”** or **“Order”** means: an order form that is submitted by or on behalf of Customer and executed by or on behalf of the parties referencing the Agreement and that specifies the Software and/or Services ordered by Customer, as well as the specific terms and conditions, for that particular transaction. An Order is not binding until Memgraph accepts and countersigns the Order.
- 1.12. **“Services”** means those services, including Support Services, which may be provided to Customer by Memgraph pursuant to the terms of the Agreement and are expressly limited to those services directly related to Customer’s use of the Software, and expressly exclude any other services.
- 1.13. **“Software”** means Memgraph’s proprietary downloadable graph database enterprise software known either as (i) Memgraph Enterprise Edition (MEE) and the associated technical documentation located at <https://docs.memgraph.com/> (**“Documentation”**), as well as software updates, upgrades, bug fixes, or modified versions thereof that Memgraph licenses or provides to Customer directly or indirectly for use throughout the Subscription Term or (ii) Memgraph’s free-to-use software known as Memgraph Community Edition (MCE), in each case restricted to use for Authorised Purpose(s) but not for Excluded Purposes (as defined in Section 3.1.3). For the avoidance of doubt the term Software excludes any Open Source Software (see Section 3.5) and separate terms for the MCE (including the Business Source Licence (BSL) or Apache 2.0) as published here: <https://memgraph.com/legal> shall not apply if Customer furnishes the Integrated Solution to its End User(s) under the Agreement.
- 1.14. **“Subscription”** means the binding, non-cancellable contract for the use of the Software during the Subscription Term in accordance with the Agreement.
- 1.15. **“Subscription Term”** means the fixed term designated in an Order Document beginning on the Effective Date and ending at the end of the period stated therein. If no expiration date is specified in an Order Document, the Subscription Term shall be a three (3) year period (**“Minimum Subscription Term”**).
- 1.16. **“Support”** means the support and maintenance services, including any updates, upgrades, patches, enhancements and bug fixes for the Software that may be provided to Customer by Memgraph pursuant to Memgraph’s then-current terms and conditions set forth at <https://download.memgraph.com/legal/memgraph-support-terms-and-conditions.pdf>. For the avoidance of doubt, End User(s) are not entitled to receive support from Memgraph directly.

## **2. ORDERS, DELIVERY; SUPPORT.**

- 2.1. **Delivery.** Customer shall access the Software from Memgraph’s website or online repository (as instructed by Memgraph) after the Effective Date. Memgraph shall deliver to Customer the licence key necessary to unlock the Software after Customer accepts an Order. Unless otherwise stated in an Order, Customer is solely responsible for installing Software on Customer’s own computer equipment and using it only according to this Agreement. In some instances, Customer’s purchasing relationship exists solely between End User and an authorised reseller of Customer’s Integrated Solution (a **“Reseller”**), in which case Customer shall remain responsible to pay the applicable fees to Memgraph according to Sections 5.1-5.3 (Fees and Payment).
- 2.2. **Support.** Memgraph will use commercially reasonable efforts to provide Support to Customer directly (excluding any Support to End Users or Resellers) at the support tier stated in the applicable Order. The Support terms and conditions are subject to change at Memgraph’s discretion; however, Memgraph will not materially reduce the level of Support during a Subscription Term for which Fees have been paid.

## **3. LICENCE GRANTS; RESTRICTIONS AND PROPRIETARY RIGHTS.**

Customer’s access and use rights are granted solely for an Authorized Purpose excluding any Excluded Purpose as defined below.

### 3.1. End User Software Licence.

- 3.1.1. In consideration of the Fees paid hereunder and subject to the terms of this Agreement (including Schedule A) and the applicable Order, Memgraph grants Customer a world-wide (subject to export laws and restrictions), non-exclusive, non-transferable, non-sublicensable, and limited licence during the applicable License Term, to download, access, install and use the Software and Documentation solely for Authorized Purpose(s) (but not for Excluded Purposes), in each and all cases up to the maximum capacity ("**Licensed Capacity**"), and subject to the usage rules, specified in the applicable Order Document. All copies of the original and modified Software, and any Derivative Work of the Software, are subject to this license grant.
- 3.1.2. "**Authorized Purpose**" means any of the following: (i) for Customer's internal business use; (ii) to integrate the Software with Customer's own proprietary software, provided that Customer's proprietary software adds a primary and significant functionality to the Software (the "**Integrated Solution**"); (iii) to host the Integrated Solution and make it available to third-parties (including Customer's End Users) on a 'software-as-a-service' or an equivalent distributed model; and/or (iv) to (a) create, compile and test Derivative Works, (b) use Derivative Works solely for Customer's internal business purposes, and (c) distribute Derivative Works back to Memgraph for potential incorporation into Memgraph's maintained code base at its sole discretion.
- 3.1.3. "**Excluded Purpose**" means any of the following: (i) modifying, adapting, transforming, disassembling, decompiling, reverse-engineering or creating derivative works of the Software or any portion thereof, other than as permitted by the Authorised Purpose; (ii) making the Software accessible to any third-party outside of Customer's organisation as a standalone solution or service, or allowing any third-party outside of Customer's organisation to directly operate or control the Software; and/or (iii) using the Software to create a work or solution which competes (or might reasonably be expected to compete) with the Software.
- 3.1.4. Customer may make available or otherwise distribute the Integrated Solution, including the embedded Software, to End Users under terms not less protective than those set forth in Schedule A (i) for installation and use on the End User's own premises; and/or (ii) via a private or public SaaS model operated by or on behalf of Customer.
- 3.2. **Limited right to modify the Software.** Memgraph grants Customer a right to: (i) create, compile and test Derivative Works; (ii) use Derivative Works solely as part of an Integrated Solution; and (iii) distribute, at Customer's election, Derivative Works back to Memgraph for potential incorporation, as determined by Memgraph, into Memgraph's maintained code base.
- 3.3. **General Restrictions.** Customer acknowledges that the Software, and its structure, organisation, and source code, constitute Memgraph's and its suppliers' valuable trade secrets, and that usage of the Software is subject to the following restrictions:
- 3.3.1. **Restrictions.** Customer agrees not to, and not to authorise any third party or End User to: (i) allow access or use of the Software as part of the Integrated Solution by anyone other than its End Users; (ii) distribute, embed, sell, rent, transfer, lease, lend, sublicense, loan, assign, pledge, grant a security interest in, or otherwise make the Software accessible or available to any third party "as is"; or otherwise use the Software in any service-bureau, timesharing, outsourcing or similar arrangement; (iii) subject only to the limited rights set out in Section 3.2, modify, adapt, transform, derive, disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of, the Software or any portion thereof; (iv) remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Software; (v) conduct any competitive analysis, publish or share with any third party any results of any technical evaluation or tests performed on the Software, or disclose Software features, errors or bugs to a third party without Memgraph's prior written consent; or (vi) engage in any act designed to circumvent any restriction set forth in the Agreement, in the Software, or in an Order, including but not limited to restrictions related to Licensed Capacity.
- 3.3.2. Subject to the terms and conditions of this Agreement, in addition to Customer's employees, Customer may permit its independent contractors and consultants ("**Contractors**") to use the Software on behalf of Customer and for the sole benefit of Customer. Customer will remain responsible for compliance by any Contractor with all of the terms and conditions of this Agreement.

- 3.4. **Ownership; Reservation of Rights.** This is an agreement for use of Memgraph Software and not an agreement for sale. Customer acknowledges that it is obtaining only a limited right to use the Software on a licensed basis, and that irrespective of any use of the words “**purchase**”, “**sale**”, “**licence**” or like terms hereunder no ownership rights are being conveyed to Customer. Customer agrees that Memgraph or its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the Software and/or Open Source Software. All rights and licences not expressly granted to Customer hereunder are expressly reserved by Memgraph and/or its licensors. Nothing in this Section shall be deemed as granting Memgraph ownership of Customer Data or in any way impacting Customer’s ownership of Customer Data.
- 3.5. **Third Party Code.** The Software may contain or be provided with components which are licensed from third parties, including components subject to the terms and conditions of “**open source**” software licences (“**Open Source Software**”). Open Source Software may be identified in the Software, Documentation, or in a list of the Open Source Software provided to Customer upon your written request. To the extent required by the licence that accompanies the Open Source Software, the terms of such licence will apply in lieu of the terms of the Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification, or reverse engineering. Customer is obliged to adhere to and pass on the applicable license terms of Open Source Software to its End Users along with the End User License Agreement.
- 3.6. **IP Ownership.** The parties agree that, save as otherwise provided in the Agreement, neither party shall gain, by virtue of the Agreement, any rights of ownership or any other interest, right or title of copyrights, patents, trade secrets, trademarks, or any other intellectual property rights owned by the other party. Any and all new works developed in the course of performing obligations pursuant to the Agreement and all new inventions, innovations or ideas developed by a party in the course of performance of its activities under the Agreement, will belong to that party who develops the same. Notwithstanding anything to the contrary in this Section, the parties understand and agree that any and all proprietary materials developed by a party prior to the Agreement and any modifications, enhancements, improvements or inventions made to such proprietary materials shall be owned by that party, regardless of which party prepared or developed such modifications, enhancements, improvements or inventions. For the avoidance of doubt, Customer does not obtain any right in any trademark or logo of Memgraph by virtue of the Agreement.
- 3.7. **Licence-back of Derivate Works.** If Customer elects, at its sole discretion, to distribute Derivative Works back to Memgraph for potential incorporation into Memgraph’s maintained code base, Customer grants Memgraph (without any restrictions, limitations or requirement of remuneration) a worldwide, non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable, transferable and sublicensable right to use, exploit, modify, make derivative works of, commercialise, distribute and otherwise exploit such Derivative Works.

#### **4. CUSTOMER DATA; OBLIGATIONS OF CUSTOMER AND MEMGRAPH.**

- 4.1. Customer shall retain all of its rights, title, and interest in and to its intellectual property rights in Customer Data. Customer grants to Memgraph a non-exclusive, worldwide, limited-term right solely to process Customer Data as reasonably necessary to perform its obligations under the Agreement, including to support Customer’s use of the Software, to ensure the security of and administer the Software, and to deliver Services in accordance with the Agreement or to improve the Software.
- 4.2. **Protection of Customer Data.** Memgraph will maintain appropriate administrative, physical, and technical safeguards, consistent with generally prevailing industry standards, for protection of the security, confidentiality, and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Data by Memgraph personnel, except as permitted by the Agreement.

- 4.3. **Personal data.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Section 4.3 is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation. Notwithstanding the foregoing, the parties acknowledge that, in the ordinary course of providing the Services, Memgraph shall not process personal data (as defined in Data Protection Legislation) on behalf of Customer. In the event that Customer requires Memgraph to process personal data on its behalf, it shall notify Memgraph and the parties shall execute such additional terms as necessary to comply with applicable Data Protection Legislation.

## 5. FEES AND PAYMENT.

- 5.1. **Fees.** Customer will pay Memgraph the fees for the use of the Software and Services as set forth in the applicable Order, any Reseller order or according to the usage by End Users ("**Fees**"). Customer shall monitor any and all Software usage hereinafter (including usage across all End Users or by any Reseller). Customer acknowledges and agrees that if Customer's use of the Software for an Authorised Purpose (including usage across all End Users or by any Reseller) exceeds the Licenced Capacity set forth on the applicable Orders or otherwise requires the payment of additional fees (per the terms of the Agreement), Customer shall be invoiced for such usage and Customer agrees to pay the additional fees in accordance with this Section. Notwithstanding the terms of Section 5.4 below (Reconciliation), Customer agrees that it is obligated to ensure that the Software usage by Customer, Resellers and End Users does not exceed the Licenced Capacity and to promptly notify Memgraph of any such excess usage no more than thirty (30) days from the last day of the calendar month during which such excess usage occurred.
- 5.2. **Payment Terms.** Except as otherwise specifically set forth on an Order Document, all Fees will be invoiced by Memgraph annually in advance and are due and payable within thirty (30) days after the receipt of the invoice. If Fees are not paid when due, or in the event of any other breach of this Agreement, Customer shall discontinue use of the Software and Memgraph may suspend its performance, including its delivery of Support or other Services without further notice and without penalty. All Orders (including multi-year Subscriptions with annual payment schedules) are non-cancellable and all amounts paid are non-refundable, unless otherwise expressly set forth herein. Any invoiced amount not received by the due date will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by applicable law, whichever is lower.
- 5.3. **Taxes.** Fees are exclusive of taxes. Customer will pay any sales, use, value added, duties, fees and other governmental assessments or charges arising out of the Agreement and the transactions contemplated herein. Customer will make all payments free and clear of, and without reduction for, any withholding taxes.
- 5.4. **Reconciliation.** At Memgraph's request, Customer will provide Memgraph with a quarterly report detailing its use of the Software by Customer, its Resellers and End Users, including its non-production and/or production use and using the self-monitoring capabilities of the Software. If Memgraph has reason to believe that Customer's use is in excess of the Licenced Capacity, it may inspect Customer's records related to such reports not more frequently than annually. Any on-site review, if necessary, will be conducted during regular business hours at Customer's offices. The parties will use reasonable efforts to promptly resolve any discrepancies between licensed usage and actual usage.

- 5.5. **Resellers.** If Customer appoints any Reseller(s) to make the Integrated Solution available to End Users it shall ensure compliance with the following conditions: (i) Reseller must agree to terms and conditions no less restrictive than those agreed by Customer under this Agreement to protect Memgraph's Software and its use and distribution; (ii) Reseller may not authorize further resellers to benefit from any rights conferred under this Agreement; (iii) Reseller shall furnish the EULA to End Users and ensure their acceptance prior to granting access to the Integrated Solution and shall remain liable for their compliance to Customer; (iv) Reseller shall provide comprehensive and up-to-date reports and notices similar to Section 5.4. to Customer or, if requested, to Memgraph directly; (v) Reseller agrees to be audited by Memgraph in case Memgraph reasonably suspects a breach of the terms of this Agreement; (vi) Reseller shall stop reselling the Integrated Solution if requested by Memgraph for any reason and without any liability to Reseller or Customer and (viii) Reseller shall not modify, rebrand, or remove any trademarks, notices, or proprietary marks regarding the Software or any Open Source Software. Customer remains fully responsible and liable for all acts, omissions, and obligations of any Reseller, and for ensuring that all End Users comply with the terms of the EULA. No act or omission of a Reseller shall relieve the Customer of its obligations under this Agreement.

## 6. APPLICABLE LAWS.

Each party will comply with all Applicable Laws in its performance under the Agreement, including but not limited to those applicable to data collection and the privacy and security of personal information and to anti-bribery, anti-corruption, anti-slavery and human trafficking.

## 7. REPRESENTATIONS AND WARRANTIES.

- 7.1. **Mutual Representations and Warranties.** Each party represents and warrants to the other that: (i) it has all requisite power and authority, corporate or otherwise, to execute, deliver and perform its obligations under the Agreement; and (ii) the Agreement constitutes its legal, valid and binding obligations and may be enforced against it.
- 7.2. **Limited Memgraph Warranty; Remedy.** Memgraph warrants that the Software, when used as permitted hereunder and in accordance with the Documentation, will operate in all material respects as described in the applicable Documentation, and that the Services will be provided in a professional manner consistent with industry standards. Customer's sole and exclusive remedy, and Memgraph's sole and exclusive obligation, for breach of warranty will be (i) during the ninety (90) day period following initial delivery of the Software under an Order, Memgraph's correction of the program errors that cause the breach of warranty, or if Memgraph cannot substantially correct such breach in a commercially reasonable manner, a refund of the Fees paid for the nonconforming Software and (ii) during the remainder of the relevant Subscription Term, Memgraph's delivery of Support with respect to any such program errors. In the event of a refund remedy, Customer's right to use the Software or receive Services will end. In the event of any noticed breach of warranty with respect to Services, Memgraph's sole and exclusive obligation shall be the re-performance of the deficient Services.
- 7.3. **Limitations.** Memgraph does not warrant that the Software or the Services will be error-free, secure, uninterrupted or meet Customer's specific requirements or that performance of the Services will be uninterrupted. Memgraph will have no warranty obligation under Section 7.2 for any modifications to the Software made by Customer or for Customer's misuse or failure to use the Software in accordance with its Documentation, instructions provided by Memgraph, or the Agreement.
- 7.4. **Disclaimer.** THIS SECTION 7 IS A LIMITED WARRANTY AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT EXPRESSLY AS SET FORTH IN SECTION 7.2, THE SOFTWARE AND ANY THIRD-PARTY CODE AND ALL SERVICES ARE PROVIDED "AS IS". MEMGRAPH MAKES NO OTHER WARRANTIES OR REPRESENTATIONS HEREUNDER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES AND REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## 8. INDEMNIFICATION.

- 8.1. **By Memgraph.** Memgraph will defend any action against Customer brought by an unaffiliated third party (other than a Customer affiliate, Reseller or End User) to the extent the action is based on a claim that the Software infringes a third party's patent, copyright or trademark (a "**Software Claim**") and indemnify Customer from the damages, liabilities, costs and expenses (including reasonable attorneys' fees) finally awarded against Customer or agreed to in a settlement resulting from such Software Claim. If Customer's use of the Software is (or in Memgraph's opinion likely to be) enjoined, then Memgraph may, at its own expense and at its option: (i) substitute substantially similar functionality for the Software which renders it non-infringing; (ii) procure for Customer the right to continue to use the Software; or if (i) and (ii) are not commercially reasonable, terminate the Agreement and refund Customer any prepaid, unused (pro-rated) Fees for the duration of the then-current License Term. The foregoing obligations of Memgraph will not apply: (a) if the Software is modified by any party other than Memgraph, but solely to the extent the alleged infringement is caused by such modification; (b) if the Software is used in combination with other products or processes not provided or authorised by Memgraph, but solely to the extent the alleged infringement is caused by such combination; (c) use of any version or release of Software other than the most current version or release made available to Customer by Memgraph, if its use would have avoided the infringement; (d) any unauthorised use of the Software. THIS SECTION 8.1 SETS FORTH MEMGRAPH'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY SOFTWARE CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.
- 8.2. **By Customer.** Customer will defend any action against Memgraph brought by an unaffiliated third party to the extent the action is based on a claim that the Customer Data or Customer's or its End User's unauthorised use of the Software infringes a third party's personality rights, patent, copyright or trademark (a "**Claim**") and indemnify Memgraph from the damages, liabilities, costs, and expenses (including reasonable attorneys' fees) finally awarded against Memgraph or its suppliers may incur as a result of a third-party claim arising from or related to Customer Data, or misuse or unauthorised use of the Software by Customer, Reseller or any End User. THIS SECTION 8.2 SETS FORTH CUSTOMER'S SOLE LIABILITY AND MEMGRAPH'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.
- 8.3. **Conditions.** All defence and indemnity obligations under Sections 8.1 and 8.2 are conditioned on the indemnitee (i) giving the indemnitor written notice of the relevant claim promptly after the indemnitee receives notice of the (Software) Claim; (ii) reasonably cooperating with the indemnitor, at the indemnitor's expense, in the defence and/or settlement of the (Software) Claim; and (iii) giving the indemnitor sole control of the defence and any settlement negotiations. The indemnitee may participate in the defence and/or settlement at its expense.

## 9. LIMITATION OF LIABILITY.

- 9.1. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER MEMGRAPH NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY LOST PROFITS OR LOSS OF USE OR DATA, SUBSTITUTE GOODS OR SERVICES, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR OTHER INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.
- 9.2. **LIMITATIONS ON DIRECT DAMAGES.** EXCEPT FOR DAMAGES THAT CANNOT BE LIMITED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE AGREEMENT, EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO MEMGRAPH UNDER THE AGREEMENT DURING THE TWELVE MONTHS (12) PRECEDING THE CLAIM.

- 9.3. Nothing in the Agreement limits or excludes the liability of either party for (i) death or bodily injury caused by a party's negligence; or (ii) fraud or fraudulent misrepresentation; or (iii) wilful default or deliberate misconduct or (iv) Customer's breach of Section 3 (Licence Grant, Restrictions and Proprietary Rights).

## 10. CONFIDENTIALITY.

- 10.1. The Receiving Party will use the same degree of care to protect the Disclosing Party's Confidential Information that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). The Receiving Party will (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of the Agreement or any Orders to any third-party other than its affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's, or accountant's compliance with this "**Confidentiality**" section. The Confidentiality obligations shall survive for a period of two (2) years from the termination or expiration of the Agreement.
- 10.2. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of complying and providing secure access to that Confidential Information.

## 11. TERMINATION.

- 11.1. **Term.** The term ("**Term**") of the Agreement will commence on the Effective Date and continue until all Orders expire, unless earlier terminated in accordance with this Section 11.
- 11.2. **Termination for Cause.** In the event of a material breach of the Agreement (excluding any breaches for which an exclusive remedy is expressly provided), the non-breaching party may terminate the Agreement if such breach is not cured within thirty (30) days after written notice thereof. Without affecting any other right or remedy available to it, and to the fullest extent permitted by Applicable Law, either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.3. **Effect of Termination.** Upon the termination of the Agreement: (i) all licences and usage rights granted hereunder will terminate and Customer shall ensure that also any EULA is terminated; (ii) Customer will promptly discontinue all use of the affected Software and Documentation and erase all other tangible embodiments of Memgraph Confidential Information in Customer's possession or control, and promptly certify the same to Memgraph; (iii) Memgraph may immediately cease providing the Services; (iv) subject to this Section, Memgraph will promptly return or delete all tangible embodiments of Customer Confidential Information in Memgraph's possession or control; and (v) any terms that by their nature extend beyond termination (or expiration) of the Agreement will survive. If a party's file retention policies or a valid legal order provides for backup or archival copies of files to be retained, such party will protect the other party's Confidential Information as required hereunder, and permanently erase, delete, or destroy such Confidential Information as soon as permissible under such policy or order.



## 12. MISCELLANEOUS.

- 12.1. **Assignment.** The Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Either party may assign the Agreement with the prior written consent of the other party or in connection with a merger, reorganisation, acquisition, or other transfer of all or substantially all of its assets or voting securities, provided that: the assignee (i) is not a direct competitor of the other party; (ii) provides prompt written notice of such assignment to the other party; (iii) is capable of fully performing all obligations under the Agreement; and (iv) agrees to be bound by the terms and conditions of this Agreement. Save as permitted above, any attempt to transfer or assign the Agreement will be null and void.
- 12.2. **Force Majeure.** Memgraph shall have no liability to Customer under the Agreement if it is prevented from or delayed in performing its obligations, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Memgraph or any other party), failure of a utility service or transport or telecommunications network, act of God, war, pandemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that, to the extent possible given the circumstances, Customer is notified of such an event and its expected duration.
- 12.3. **Governing Law.** The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, excluding its conflict of laws principles (in particular excluding the applicability of the United Nations Conventions on Contracts for the International Sale of goods (Vienna Convention)).
- 12.4. **Jurisdiction.** Each party irrevocably agrees that the competent courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 12.5. **Severability; Waiver; Construction.** If a court of competent jurisdiction adjudges any provision of the Agreement to be invalid or unenforceable, the remaining provisions of the Agreement, if capable of substantial performance, will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. All waivers must be in writing. A party's consent to, or waiver of, enforcement of the Agreement on one occasion will not be deemed a waiver of any other provision or such provision on any other occasion. In the Agreement, the word "including" means "including but not limited to." No presumption will operate in favour of or against any party as a result of its role in drafting the Agreement.
- 12.6. **Subcontractors.** Memgraph may use the services of subcontractors in connection with its performance of the Agreement, provided that Memgraph remains solely responsible for (i) compliance of any such subcontractor with the terms of the Agreement and (ii) the overall performance of Memgraph as required under the Agreement.
- 12.7. **Use of Aggregate Data.** Customer agrees that Memgraph may collect, use and disclose quantitative data and metadata derived from the use of the Software (i) for its own internal, statistical analysis, (ii) to develop and improve the Software and (iii) to create and distribute reports and other materials regarding use of the Software. For clarity, any such data collected, used, and disclosed will be in anonymised aggregate form only and shall not identify Customer or its Users, or disclose any Customer Data.
- 12.8. **Independent Contractors.** The parties are independent contractors. No agency, partnership, franchise, joint venture, or employment relationship is intended or created by the Agreement. Neither party has the power or authority to create or assume any obligation, or make any representations or warranties, on behalf of the other party.
- 12.9. **Publicity.** Memgraph may, in conformity with Customer's trademark usage guidelines, use Customer's name and logo in Memgraph's sales and marketing materials, including in business presentations, Customer lists, and on websites. Neither party will issue a press release regarding the Agreement without the other party's prior written consent. Neither party will disclose the terms of the Agreement to any third party, except as required by law.

- 12.10. **Notice.** Any notice, consent, or waiver hereunder must be in writing, addressed to the attention of “**Legal Department**” at the address set forth above, and delivered by personal delivery, reputable rapid courier, or certified/registered mail, return receipt requested, and will be deemed given upon personal delivery, one (1) day after deposit with an overnight domestic courier, two (2) days after deposit with an international courier, or five (5) days after deposit in the certified or registered mail. A party may specify a new address by providing notice to the other party in accordance with this Section.
- 12.11. **Supremacy; Modification.** The Agreement will prevail over the terms of any purchase order, acknowledgement, or similar document submitted by Customer to Memgraph, and will have no effect. If the express terms of an Order Document conflict with the Agreement, the terms on the Order Document will prevail, but only with respect to that Order Document. The Agreement cannot be varied or supplemented by course of dealing or by usage of trade. All modifications or amendments to the Agreement must be in writing and signed by both parties, except that subsequent renewals and purchases of additional Licenced Capacity can be procured by payment against an issued invoice as set forth in Section 5 (“**Fees and Payment**”) above.
- 12.12. **No Third Party Beneficiaries.** The Agreement is not intended and shall not be construed to give any third party any interest or rights with respect to or in connection with any agreement or provision herein, except as expressly provided for in the Agreement.
- 12.13. **Entire Agreement.** The Agreement (including Schedule A and the Order) in its original English text, sets forth the complete, exclusive, and final agreement of the parties concerning the subject matter hereof, and supersedes, replaces, and merges all prior and contemporaneous agreements, communications, and understandings, both written and oral, between the parties concerning the subject matter hereof. The Agreement may be executed in counterparts.

## Schedule A: End User Licence Agreement (EULA)

Customer is obliged to ensure that each End User having access to the Integrated Solution - whether in a SaaS like hosted solution (multi-tenant or single-tenant) or in an on premise installed solution - has executed an End User License Agreement that contain terms not materially less protective of Memgraph than the Agreement including without limitation the terms of this Schedule A, in particular:

1. **Licence Grant.** Customer grants End User a limited, non-exclusive, non-transferable licence to use the Software solely:
  - 1.1. as embedded in the Integrated Solution; and
  - 1.2. for End User's internal business purposes.
  - 1.3. The Software may not be used as a stand-alone product or offered as a service separate from the Integrated Solution.
  - 1.4. Customer must conspicuously display this license on each original or modified copy of the Software and any Derivative Work, by including a copy of this license in any metadata.
2. **Restrictions.** End User shall not:
  - 2.1. copy, modify, adapt, translate, or create Derivative Works of the Software;
  - 2.2. reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code (except to the limited extent permitted by law);
  - 2.3. sublicense, rent, lease, lend, or distribute the Software separately from the Integrated Solution;
  - 2.4. use the Software to provide time-sharing, service bureau, or hosting services for third parties; or
  - 2.5. publish or disclose results of any benchmarking of the Software.
3. **Ownership.** Memgraph retains all intellectual property rights in and to the Software. End User acquires no rights other than those expressly granted in the EULA.
4. **Confidentiality.** Customer and End User will use the same degree of care that they are using to protect the confidentiality of their own confidential information (but not less than reasonable care) with respect to the use and disclosure of the Software and any Derivative Work.
5. **Support.** Any support, maintenance or updates relating to the Integrated Solution or the Software shall be provided solely by Customer and not by Memgraph.
6. **No Warranties.** To the maximum extent permitted by applicable law, Customer will not make any representations or warranties regarding the functionality or performance of the Software to End Users. The Software is provided "as is" and Memgraph disclaims all warranties and conditions, express or implied, including (without limitation) warranties of merchantability, fitness for a particular purpose, non-infringement and title.
7. **Liability.** Memgraph has no liability for the Integrated Solution or for any services provided by Customer.
8. **Termination.** The EULA shall terminate automatically if End User fails to comply with any of its terms. Upon termination, End User must cease all use of the Software and destroy all copies in its possession or control. Customer shall terminate the EULA if the Agreement with Memgraph is terminated by Memgraph for Customer's material breach.
9. **Binding.** The EULA must be binding on the End User under Applicable Laws in the country in which Customer is providing access to the Integrated Solution.

10. **Audit.** Customer must have the right to perform audits to verify End User's usage of the Integrated Solutions not less protective than Memgraph's rights under Section 5.4 (Reconciliation).
11. **Data.** The EULA shall grant Memgraph and its contractors a non-exclusive right to process and use End User data as required to provide and support the Software to Customer. End User shall not have any right to request support from Memgraph directly.
12. **Enforcement of Rights.** If any third party is accessing, marketing or selling the Software without authorization, Customer will cooperate with Memgraph in the enforcement and protection of Memgraph's rights, which may include - at Memgraph's request, to temporarily stop selling the Integrated Solution to any such third party unless and until such unauthorized activity is resolved to Memgraph's satisfaction.