

ON-PREMISES LICENSE AGREEMENT

This **On-Premises License Agreement** (“**Agreement**”) is dated [insert date] (“**Effective Date**”) and is between **HarperDB, Inc.** a Delaware corporation (“**HarperDB**”) and [insert customer name], a [insert state] [corporation OR limited liability company] (“**Licensee**”) and governs Licensee’s use of the Software (as defined below). HarperDB and Licensee agree as follows:

1. DEFINITIONS.

1.1 “Licensee Property” means all information and materials, including, without limitation, all Confidential Information and all Licensee input and output data and Licensee specific business processes, provided by Licensee to HarperDB under this Agreement.

1.2 “Documentation” means the user manuals provided by HarperDB to Licensee in connection with the Software.

1.3 “Error” means any reproducible material error or material defect in the Software that causes the Software not to operate substantially in accordance with the Documentation.

1.4 “Intellectual Property Rights” means all worldwide intellectual property rights in existence now or in the future, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 “License Key” means the software key provided to Licensee by HarperDB that is necessary to allow use of the functionality of the Software in accordance with the applicable Order and Section 2.1.

1.6 “Order” means any written order document executed by HarperDB and Licensee setting forth the terms and conditions relating to the Software licensed under this Agreement. Each Order is incorporated by reference into this Agreement. The initial Order is attached at Exhibit A.

1.7 “Software” means HarperDB’s proprietary data management software program described in the applicable Order, in executable code format, and any modified, updated or enhanced versions of such programs or modules that HarperDB may provide to Licensee pursuant to this Agreement.

1.8 “Support” means those maintenance and Support for the Software described in *Exhibit B*.

1.9 “Third Party Software” means any third party software programs necessary for the operation of the Software identified by HarperDB in the applicable Order, if any.

2. LICENSE GRANT AND OTHER RIGHTS.

2.1 License Grant. Subject to the terms and conditions of this Agreement, HarperDB grants to Licensee, during the Term, a non-exclusive, non-transferable (except as otherwise provided in Section 12.2), license, without the right to sublicense, to install and execute the Software solely for Licensee’s internal business purposes in accordance with the Documentation and the limitations as set forth in this Agreement and any Order. For the avoidance of doubt, under the foregoing license right, Licensee may install the Software on a third party service provider’s servers that are under Licensee’s control and Licensee may access and use the Software from such servers under Licensee’s control.

2.2 Restrictions. Licensee shall not make any copies of the Software and Licensee shall obtain a separate License Key for each instance of the Software used by Customer. Licensee acknowledges that the Software and its structure, organization, and source code, constitute valuable trade secrets of HarperDB and its suppliers. Except as expressly permitted in Section 2.1, Licensee shall not, and shall not permit any third party to: (a) modify, adapt, alter, translate, or create derivative works from the Software or the Documentation; (b) sublicense, distribute, sell, use for service bureau use or as an application service provider, lease, rent, loan, or otherwise transfer the Software or the Documentation to any third party; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software (except to the extent required by applicable law); (d) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the Software; or (e) otherwise use or copy the Software except as expressly permitted in this Agreement. Licensee shall notify HarperDB of any unauthorized use or disclosure of the Software.

3. DELIVERY, ACCEPTANCE AND INSTALLATION. HarperDB shall deliver the Software electronically via HarperDB’s standard electronic delivery process. Without limiting the warranties in Section 6.1, the Software will be deemed accepted upon delivery. Unless otherwise set forth in this Agreement, Licensee is responsible for installing the Software and License Keys in accordance with the Documentation and the installation instructions provided by HarperDB. Licensee acknowledges that the Software uses a license key mechanism used to set up and restrict the functionality of the Software. Licensee agrees not to use unauthorized license keys or otherwise circumvent HarperDB’s License Key mechanism. Licensee is responsible for providing all applicable hardware and the Third Party Software required for the operation of the Software. All Third Party Software license agreements will be agreed to by Licensee and the applicable Third Party Software vendor.

4. SUPPORT SERVICES. Subject to the terms and conditions of this Agreement and *Exhibit B*, HarperDB shall provide Support in accordance with the terms and conditions set forth in *Exhibit B*.

5. FEES AND PAYMENT.

5.1 Fees. Licensee shall pay HarperDB the fees set forth in the applicable Order, and other agreed upon fees and expenses, in accordance with Section 5.2 (collectively, the “Fees”). All Fees are non-cancelable and non-refundable, except as otherwise expressly set forth in this Agreement. Fees exclude, and Licensee shall make all payments of Fees to HarperDB free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. Licensee agrees that Licensee has not relied on the future availability of any software, programs, updates or upgrades in entering into any payment obligations under this Agreement.

5.2 Payment Terms. Licensee shall pay to HarperDB the Fees upon execution of this Agreement. Unless otherwise agreed to in writing by both parties, Licensee shall pay to HarperDB any additional Fees, travel, and other services, expenses or charges within 30 days after Licensee’s receipt of the applicable invoice. All payments must be made in U.S. dollars. HarperDB may charge Licensee interest on any amounts not paid when due at the rate of 1½% per month or the maximum rate permitted by applicable law; whichever is less, from the due date until paid.

5.3 Audit Rights. At all times during the Term, and for at least 3 years after termination of this Agreement, Licensee shall maintain complete and accurate records of all information relevant to Licensee’s usage of the Software and other performance related to this Agreement. HarperDB may, during normal business hours and upon at least 5 business days prior notice, to audit Licensee’s records relating to Licensee’s use of the Software and performance under the Agreement in order to verify that Licensee has complied with the terms of this Agreement. Licensee shall promptly pay to HarperDB any amounts shown by any such audit to be owing, as reasonably determined by HarperDB, plus interest as provided in Section 5.2 above. Such audits may be conducted no more than once in any period of 6 consecutive months.

6. WARRANTIES; DISCLAIMER

6.1 Software Warranty. For a period of 30 days after the date of delivery of the Software (“**Software Warranty Period**”), HarperDB warrants that the Software, when used as permitted by HarperDB and in accordance with the instructions in the Documentation, will operate free of Errors. HarperDB does not warrant that the Software will meet the requirements of Licensee. HarperDB does not guarantee that the Software will perform uninterrupted or error free, or that HarperDB will correct all Errors. The warranties set forth in this Section 6.1 do not cover any copy (complete or partial) of the Software or any Documentation which has been altered or changed in any way by Licensee or other third party. HarperDB is not responsible for problems caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured, nor is HarperDB responsible for problems with the Software that occur as a result of third party software or hardware that is incompatible with the operating system for which Licensee procured the Software.

6.2 Support Warranty. HarperDB warrants that Support, if ordered, will be provided in a professional and workmanlike manner. Licensee must notify HarperDB of any Support warranty deficiencies within 30 days after performance of the deficient Support.

6.3 Remedies. HarperDB shall, at its own expense and as its sole obligation and Licensee’s exclusive remedy for any breach of HarperDB the above warranties (a) with regard to the warranty in Section 6.1, use reasonable efforts to correct those reproducible Errors that caused breach of the warranty reported during the warranty period, or, if HarperDB reasonably determines that it is unable to correct the error, HarperDB shall refund to Licensee all Fees actually paid, in which case this Agreement and Licensee’s right to use the Software will be terminated, and (b) with regard to the warranty in Section 6.2, re-perform the deficient Support.

6.4 Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 6, THE SOFTWARE, DOCUMENTATION, AND SUPPORT ARE PROVIDED “AS-IS” AND THE EXPRESS WARRANTIES IN THIS SECTION 6 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, SERVICES AND SUPPORT, AND HARPERDB DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN AND THAT NO WARRANTIES ARE MADE HEREIN BY ANY OF HARPERDB’S SUPPLIERS.

7. INFRINGEMENT CLAIMS. HarperDB shall defend any claim, suit, or action against Licensee brought by a third party to the extent based on an allegation that the Software, as delivered, infringes any intellectual property rights of such third party (each, a “**Licensee Claim**”), and HarperDB shall indemnify and hold Licensee harmless, from and against damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and other legal expenses) (collectively, “**Losses**”) that are specifically attributable to such Licensee Claim or those costs and damages agreed to in a settlement of such Licensee Claim. The foregoing obligations are conditioned on Licensee: (a) promptly notifying HarperDB in writing of such Licensee Claim; (b) giving HarperDB sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at HarperDB’s request and expense, assisting in such defense. If HarperDB believes that the Software infringes or has infringed a third party’s Intellectual Property Rights, then HarperDB may, at its option and at its own expense either (a) procure for Licensee the right to continue using the Software, (b) replace the Software with a non-infringing but functionally equivalent product, (c) modify the Software so it becomes non-infringing, or (d) if none of the foregoing alternatives is commercially reasonable, then HarperDB may terminate the license for, and require return of, the Software and refund a pro-rated amount of the fees Licensee may have paid to HarperDB for the license to the Software, computed according to a 60 month straight-line amortization schedule beginning on the Effective Date. Notwithstanding the foregoing, HarperDB will have no obligation under this Section 7 with respect to any infringement claim based upon: (1) any use of the Software

not in accordance with this Agreement; (2) any use of the Software in combination with products, equipment, software, services, or data that HarperDB did not supply or approve of if such infringement would have been avoided without the combination with such other products, equipment, software, services, or data; (3) any modification of the Software by any person other than HarperDB or its authorized agents or subcontractors; (4) any information, design, specification, instruction, software, data, or material not furnished by HarperDB, or (4) use of an older version of the Software that has been superseded. This Section 7 states HarperDB's entire liability and Licensee's sole and exclusive remedy for infringement claims or actions.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE, OR SUPPORT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HARPERDB'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR THE SUPPORT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID HARPERDB UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO A LIABILITY. THE EXCLUSIONS AND LIMITATION OF LIABILITIES SET FORTH IN THIS SECTION 8 DO NOT APPLY TO CUSTOMER'S BREACH OF SECTION 2.2 OR HARPERDB'S OBLIGATIONS UNDER SECTION 7.

9. PROPRIETARY RIGHTS.

9.1 HarperDB. The Software, the Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of HarperDB and its suppliers. All rights in and to the Software and Documentation not expressly granted to Licensee in this Agreement are reserved by HarperDB and its suppliers. Licensee shall not remove, alter, or obscure any proprietary notices (including copyright notices) of HarperDB or its suppliers on the Software, or the Documentation.

9.2 Licensee. Unless otherwise specified in a separate agreement between the parties, the Licensee Property and all worldwide Intellectual Property Rights therein, are the exclusive property of Licensee and its suppliers. All rights in and to the Licensee Property not expressly granted to HarperDB in this Agreement are reserved by Licensee and its suppliers. HarperDB shall not remove, alter, or obscure any proprietary notices (including copyright notices) of Licensee or its suppliers on the Licensee Property.

10. CONFIDENTIALITY.

10.1 Definitions. "Confidential Information" means all information disclosed by one party ("**Discloser**") to the other party ("**Recipient**") under this Agreement during the Term. Confidential Information includes information that is marked or identified as confidential and, if not marked or identified as confidential, information that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party. HarperDB's Confidential Information includes the Software, Documentation, and all routines, subroutines, directories, tools, programs, or any other technology included therein.

10.2 Protection. Recipient shall not use any Confidential Information for any purpose not expressly permitted by this Agreement and shall not disclose Confidential Information to anyone other than Recipient's employees and independent contractors who have a need to know such Confidential Information for purposes of this Agreement and who are subject to confidentiality obligations no less restrictive than Recipient's obligations under this Section 10. Recipient shall protect Confidential Information from unauthorized use, access, and disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

10.3 Exceptions. Recipient shall have no confidentiality obligations under Section 10.2 above with respect to any information of Discloser that Recipient can document: (a) was already known to Recipient prior to Discloser's disclosure; (b) is disclosed to Recipient by a third party who had the right to make such disclosure without violating any confidentiality agreement with or other obligation to the party who disclosed the information; or (c) is, or through no fault of Recipient has become, generally available to the public; or (d) is independently developed by Recipient without access to or use of Confidential Information. Recipient may disclose Confidential Information if required to as part of a judicial process, government investigation, legal proceeding, or other similar process on the condition that, to the extent permitted by applicable law, Recipient gives prior written notice of such requirement to Discloser. Recipient shall take reasonable efforts to provide this notice in sufficient time to allow Discloser to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and Recipient shall reasonably cooperate in such efforts at the expense of Discloser.

11. TERM AND TERMINATION

11.1 Term. This Agreement commences on the Effective Date and, unless terminated earlier in accordance with this Agreement, continues until all Orders have terminated ("**Term**").

11.2 Order Term. The initial term of an Order shall begin on the date set forth in the Order and continue for the period set forth in such Order ("**Initial Term**"). Each Order will automatically renew for additional periods of the same duration as the Initial Term (each, a "**Renewal Term**"), unless a party gives the other party written notice of its intent to not renew at least 30 days prior to the end of the Initial Term or the then-current Renewal Term.

11.3 Termination. Notwithstanding Section 11.1, either party may terminate the Agreement by written notice to the other party if the other party materially breaches any of its obligation of the Agreement and does not cure such breach within 30 days after receiving written notice of such breach.

11.4 Effects of Termination. Upon termination or expiration of the Agreement and all Orders for any reason: (a) any amounts owed to HarperDB under this Agreement before such termination will be immediately due and payable, including related expenses; (b) all licenses granted in the Agreement will immediately cease to exist; (c) Licensee must promptly discontinue all use of the Software, erase all copies of the Software from Licensee's computers, and return to HarperDB or destroy all copies of the Software and Documentation on tangible media in Licensee's possession; and (d) each party will promptly return to the other party all Confidential Information of the other party in its possession.

11.5 Survival. Sections 1, 2.1, 5.2, 5.3, 6.4, 7, 8, 9, 10, 11.4, 12 and 12 of the Agreement, together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

12. GENERAL

12.1 Compliance with Laws. The Software may be subject to export restrictions. Licensee shall comply with all applicable export and import control laws and regulations in its use of the Software and, in particular, Licensee shall not export or re-export the Software without all required government licenses and Licensee agrees to comply with the export laws, restrictions, national security controls and regulations of all applicable foreign agencies or authorities.

12.2 Assignments. Except as expressly authorized by HarperDB in writing, Licensee may not assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under the Agreement to any third party, except that Licensee may assign this Agreement without HarperDB's consent to a successor in interest by way of merger, acquisition, or sale of all or substantially all of its assets. Any attempted assignment or transfer in violation of the foregoing will be null and void.

12.3 Force Majeure. Except for payment obligations, neither party will be liable under this Agreement, or for any failure or delay in the performance of its obligations, resulting from any cause beyond that party's reasonable control.

12.4 Notices. To be effective, notices under this Agreement must be delivered in writing by courier, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address for each party first set forth on the signature page and will be effective upon receipt, except that e-mail may be used for routine communications and to obtain operational approvals and consents but may not be used for any other notices.

12.5 Governing Law and Venue. The laws of the State of Colorado govern this Agreement and any matters related to this Agreement, without regard to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, state or federal courts sitting in Denver, Colorado in any litigation arising out of this Agreement, the Software or the Support.

12.6 Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Each party acknowledges that any actual or threatened breach of Sections 2.2 or 10 will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching party agrees to waive any bond that would otherwise be required. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other legal expenses, in addition to any other relief it may receive from the non-prevailing party.

12.7 Waivers. To be effective, any waivers must be in writing and signed by the party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.8 Severability. If any provision of this Agreement is unenforceable, the other provisions of this Agreement will be unimpaired, and the unenforceable provision will be deemed modified so that it is enforceable to the maximum extent permitted by law (unless such modification is not permitted by law, in which case such provision will be disregarded).

12.9 Entire Agreement. This Agreement and any exhibits or attachments hereto constitute the final and entire agreement between the parties regarding the subject hereof and supersedes all other agreements, whether written or oral, between the parties concerning such subject matter. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to and rejects all terms and conditions not so accepted. No amendment to this Agreement will be effective unless in writing and signed by the party to be charged.

IN WITNESS WHEREOF, the duly authorized representatives of HarperDB and Licensee have signed this Agreement as of the date set forth below.

LICENSEE: _____	HARPERDB, INC.
Signature: _____	Signature: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____
Address for Notice:	Address of Notice: 3000 Lawrence St. Denver, CO 80205

**EXHIBIT A
SOFTWARE ORDER**

This Software Order (“Order”) is attached to, and is made a part of the On-Premise Licensee Agreement between HarperDB and Licensee (“Agreement”). Capitalized terms used in this Order but not defined have the meanings given to them in the Agreement.

The table below lists the quantities of and Fees for the HarperDB Software licensed by HarperDB to Licensee under this Order:

	Company		HarperDB
Full Legal Name:		Full Legal Name:	HarperDB, Inc.
Bill To Address:		Address:	3000 Lawrence St. Denver, CO 80205
Accounts Payable Contact (Invoices Sent Here)		Billing Email:	billing@harperdb.io
Business Contact:		Company Contact:	Fred Yoon fred@harperdb.io

Software	Term (months)	Quantity	Fees (USD)	Total (USD)
			Sales Tax	
			TOTAL (USD)	

Third Party Software: (a) Node.js, (b) NPM, and (c) a Linux based OS, Linux subsystem, or container with a Linux based OS

EXHIBIT B
MAINTENANCE AND SUPPORT

Subject to the terms and conditions of the On-Premise License Agreement between Licensee and HarperDB (“Agreement”), HarperDB shall provide the Support for the Software during the Term in accordance with the terms and conditions set forth below.

Tier 1 Support

Response Time: 2 hrs.

Tier 1 Support is for standard issues which are easily reproduced. Issues of this category can either be known bugs or common user error.

Tier 2 Support

Response Time: 4 hrs.

Tier 2 Support for more complex issues that are not easily reproduced or resolved. These issues generally require more diagnostic effort to determine root cause. These issues can be caused by user error, known bugs, or environmental configuration

Tier 3 Support

Response Time: 8 hrs.

Tier 3 Support is for issues that are directly related to the Software’s code base.

Response Times. Licensee may request support by creating a support ticket in the HarperDB technical support portal. HarperDB will use commercially reasonable effort to respond to support requests in accordance with the applicable response times during regular business hours (Monday through Friday from 8am to 5pm MDT) and excluding recognized bank holidays in the United States. All determinations of Tier levels will be made by HarperDB in its discretion.

Exceptions. HarperDB will have no responsibility under this Agreement to fix any Errors or provide Support arising out of or related to the following causes: (a) modification of the Software by anyone other than HarperDB, or (b) use or operation of the Software with any hardware, software, or media not authorized by HarperDB or included in the Documentation.

Updates. HarperDB shall provide Updates for the Software as and when developed for general release in HarperDB’s sole discretion. Each Update will consist of a set of programs and files made available from HarperDB’s web site and may be accompanied by Documentation adequate to inform Licensee of the problems resolved and any significant operational differences resulting from such Update. “**Update**” means subsequent minor maintenance releases of the Software (e.g., 3.1 to 3.2) and patches that HarperDB generally makes available for Software licensees at no additional license fee to licensees provided the licensees are under a current Support Agreement with HarperDB. Updates will not include any release, option or future product which HarperDB licenses separately for an additional fee.

Upgrades. Licensee will be entitled to major Software release upgrades (e.g. 2.0 to 3.0) at no additional cost during the Term. “**Upgrade**” means subsequent major releases of the Software (e.g. 2.0 to 3.0) that HarperDB generally makes available for Software licensees at no additional license fee to licensees provided the licensees are under a current On-Premise License Agreement with HarperDB.