



DATABLEND SOFTWARE-AS-A-SERVICE TERMS AND CONDITIONS

These DataBlend Software-as-a-Service Terms and Conditions (“Service Terms”) set forth the terms and conditions pursuant to which **DATABLEND Inc.**, a Delaware Corporation, whose principal place of business is located at 515 Moscow Road, Stowe, Vermont 05672 (hereinafter, “DB”), provides its cloud-based integration platform-as-a-service (“SaaS Service”) to customers. “Customer” is the customer specified in a quote or order form (“Order Form”) entered into by DB or an authorized reseller and Customer that references these Service Terms. The “Agreement” consists of these Service Terms, the attached Exhibit A, and the Order Form(s), together with any SOW executed by the Parties under Section 6. DataBlend and Customer may hereinafter be referred to as the “Parties,” or, individually, as a “Party.” The “Effective Date” of this Agreement between the Parties is the date on which the Parties first enter into an Order Form hereunder.

1. DEFINITIONS

Each of the following terms shall have the meanings ascribed to them in the Sections set forth opposite such terms:

“Agreement”	Preamble to these Service Terms
“Authorized User(s)”	Section 2.4.
“Confidential Information”	Section 12.1
“Connection,” “Custom Connection,”	Sections 2.2 and 2.3
“Selected Connection,” “DB Custom Connection”	
“DB Pre-Built Connections”	
“Consulting Services”	Section 6.1
“Customer Data”	Section 11.1
“DB”	Preamble to these Service Terms
“Data Source”	Section 2.2
“Data Target”	Section 2.2
“DB IP”	Section 8.1
“Documentation”	Section 2.8
“Effective Date”	Preamble to these Service Terms
“European Data Protection Laws”	Section 11.6
“EU GDPR”	Section 11.6
“Feedback”	Section 8.4
“Intellectual Property”	Section 8.1
“Local Software”	Section 2.9
“Order Form”	Preamble to these Service Terms
“Party” or “Parties”	Preamble to these Service Terms
“Personal Data”	Section 11.6
“SaaS Service”	Preamble to these Service Terms
“SaaS Service Platform Fees”	Section 5.1
“Service Terms”	Preamble to these Service Terms
“SOW”	Section 6.1
“Subscription”	Section 2.1
“Subscription Fees”	Section 5.1
“Support Services”	Section 2.10
“Term” and “Initial Term”	Section 4.1
“UK GDPR”	Section 11.6

2. SAAS SERVICE

2.1 Subscription for SaaS Service. “Subscription” refers to the subscription under this Agreement for the SaaS Service for a Selected Connection (as defined in Section 2.3). DB shall use reasonable efforts to make the SaaS Service available to Customer during the Term for each active Subscription. Customer may access and use the SaaS Service only for its own internal business purposes.

2.2 Data Sources, Data Targets and Connections. The SaaS Service facilitates transfers of data between pairs of online or on-premise third-party systems (for example, between QuickBooks Online and FinancialForce). “Data Source” refers to

each such third-party system from which data is transferred, and “Data Target” refers to each such third-party system to which data is transferred. Customer must separately obtain such third-party systems and the right to use them. Third-party systems and rights to use them are not provided by DB. “Connection” refers to the connection between one Data Source and one Data Target made through the SaaS Service. For certain pairs of Data Sources and Data Targets, DB has pre-built Connections (“DB Pre-Built Connections”). Any Connection other than a DB Pre-Built Connection is referred to as a “Custom Connection.” A Custom Connection built by DB is referred to as a “DB Custom Connection.” If Customer desires to use the SaaS Service to integrate between a Data Source and a Data Target for which there is no DB Pre-Built Connection, Customer must engage DB to develop that DB Custom Connection. Customer shall not create any Custom Connections.

2.3 Selected Connections. The Order Form will include one or more pairs of Data Sources and Data Targets for Connection. Each of these Connections is referred to as a “Selected Connection.” A Selected Connection may only be a DB Pre-Built Connection or a DB Custom Connection. Customer (and its Authorized Users) may only use the SaaS Service with the Selected Data Connections. From time to time, as mutually agreed by the Parties, Customer may add additional Selected Connections. If Customer has two or more instances of the same type of Data Source or Data Target (for example, two or more Oracle databases), then any Selected Connection involving such a Data Source or Data Target is for only one instance of the applicable Data Source or Data Target.

2.4 Authorized Users. Customer shall only permit its Authorized Users to access and use the SaaS Service. “Authorized User(s)” means any natural person that Customer permits to use or access the SaaS Service for the internal business purposes of Customer, including without limitation, (i) Customer employees and (ii) Customer’s contractors and consultants, provided, such third parties have a need to use the SaaS Service based upon their relationship with Customer, they use the SaaS Service only for the internal business purposes of Customer, and no such third party is a competitor of DB.

2.5 One User Account Per Selected Connection. Each Selected Connection is authorized to be used with only one user account for each of the Data Source and the Data Target included in such Selected Connection.

2.6 Implementation. Customer is responsible for implementing and configuring all Selected Connections, whether DB Pre-Built Connections or DB Custom Connections, unless Customer engages DB to do so as provided in Section 6.

2.7 Hosting. DB shall provide all hardware, software and other equipment and resources as necessary on DB’s side to host the SaaS Service.

2.8 Documentation. “Documentation” means the technical publications relating to the SaaS Service and/or Local Software, such as installation and user guides and troubleshooting tips, DB generally makes available to customers of the SaaS Service. DB may revise the Documentation from time to time. DB grants to Customer (for use by its Authorized Users) a non-exclusive license during the Term to use the Documentation solely in connection with Customer’s use of the SaaS Service. Customer may print and reproduce the Documentation provided that: (i) the number of such copies is limited to those reasonably required for use by Customer, including, without limitation, training and archival purposes; and (ii) proprietary notices contained in the original copies of the Documentation are reproduced and included in all copies, whether such copies are made in whole or in part.

2.9 Local Software. “Local Software” means the software for installation at Customer’s site to enable Customer and its Authorized Users to use certain features of the SaaS Service. DB grants to Customer a limited, non-exclusive, non-transferable license during the Term to install and use the Local Software internally within Customer’s organization, solely in connection with Customer’s authorized use of the SaaS Service. It is Customer’s responsibility to install, implement, and maintain the Local Software, including applying any updates to it that DB may from time to time make available.

2.10 Support Services. DB shall provide Support Services to Customer during the Term. “Support Services” means email (and, to the extent made available by DB, telephone, chat or other web based support methods) support DB generally provides to customers of the SaaS Service for problem diagnosis and resolution and technical guidance for the SaaS Service. The Support Services shall be provided only during DB’s normal business hours, which are currently Monday – Friday, 9 AM to 6 PM Eastern Standard Time (excluding holidays).

Investigation and research for Customer-identified conditions reasonably determined by DB not to be covered by Support Services shall be billable to Customer as additional Support Services at DB’s then-current rates for such services. Such additional Support Services include without limitation Customer-identified conditions attributable to: (i) Customer’s misuse, improper use, alteration or damage of the SaaS Service; (ii) modifications of the SaaS Service not made by DB; (iii) the combination of the SaaS Service with software other than the Local Software to the extent such combination has not been approved by DB in writing; and (iv) support provided with respect to any version of the Documentation other than the then-most current version which has been made available to Customer by DB. Information on contacting support will be provided during initial set up.

2.11 System Availability. DB shall use reasonable efforts to make the SaaS Service accessible to Customer twenty-four (24) hours per day, seven (7) days per week, excluding scheduled and emergency maintenance and Force Majeure Events (as defined below). If the SaaS Service becomes unavailable to Customer other than for maintenance or Customer misuse, DB shall use reasonable efforts to restore availability.

3. OTHER CUSTOMER RESPONSIBILITIES

3.1 Limitations of Use. Except to the extent expressly authorized by this Agreement, Customer may not: (a) transfer to any person any of its rights to use SaaS Service or other DB IP (as defined below); (b) sell, rent, lease or share the SaaS Service or other DB IP; (c) permit any person who is not an Authorized User to use or access any SaaS Service; (d) use the SaaS Service or other DB IP other than for Customer's own internal business purposes; (e) use the SaaS Service or DB IP to provide outsourcing, service bureau, hosting, application service provider, online, or other services to third persons; (f) create any derivative works based upon the SaaS Service or other DB IP, make any modifications, changes or alterations to the SaaS Service or other DB IP, or attempt to reverse engineer, decompile or disassemble any software included in the SaaS Service or other DB IP; (g) copy or reproduce any feature, design or graphic in the SaaS Service or other DB IP or attempt to download the software underlying the SaaS Service; (h) attempt to circumvent any security device or access or derive the source code or architecture of the SaaS Service or other DB IP; (i) use or access the SaaS Service or other DB IP in order to build a competitive solution or to assist someone else to build a competitive solution; (j) load or penetration test the SaaS Service, or otherwise use the SaaS Service in any way that is, or could reasonably be expected have the potential of being, detrimental to DB's ability to provide services to any other customer, or perform an analysis or benchmarking of the SaaS Service; (k) use the SaaS Service to access the data of any other customer of DB; (l) alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the SaaS Service, the Documentation, or any other DB IP; (m) use the SaaS Service or other DB IP in a manner that violates any applicable law, ordinance, regulation or administrative order; or (n) permit any other person to do any of the foregoing.

3.2 Passwords. Customer is responsible for the use of all account user names and passwords for accessing and using the SaaS Service. Customer shall immediately inform DB if there is any reason to believe that any user name or password has been compromised or is being or is likely to be used in an unauthorized manner.

3.3 Compliance by Authorized Users. Customer shall ensure that all Authorized Users are bound to the same (or greater) obligations relative to the SaaS Service, DB Confidential Information and DB IP as set forth in the Agreement, and Customer shall ensure compliance with such obligations. Customer is solely responsible for its Authorized Users' acts and omissions related to use of the SaaS Service, and for ensuring that they comply with all the terms and conditions of this Agreement. Any violation of the terms and/or conditions of this Agreement by an Authorized User shall be deemed to be a violation by Customer of such terms and conditions.

3.4 Other Customer Responsibilities. Customer accepts sole responsibility for: (i) Customer's system configuration, design and requirements; (ii) the selection of the SaaS Service to achieve Customer's intended results; and (iii) modifications, changes or alterations to the SaaS Service or DB IP by anyone other than DB or DB's agents or contractors. Customer acknowledges that it has made its own evaluation in deciding to subscribe to the SaaS Service.

4. TERM AND TERMINATION

4.1 Term of Agreement. This Agreement will become effective as of the Effective Date and shall remain in effect for the term of the initial Order Form ("Initial Term"). This Agreement, including each Subscription hereunder, shall automatically be extended after the Initial Term on a year-to-year basis or as otherwise provided in a renewal Order Form unless and until either Party gives written notice of termination to the other Party no less than thirty (30) days prior to the end of (i) the Initial Term or (ii) any renewal period. For any Subscriptions added after the beginning of the then current subscription period, the term will be the remainder of the then current subscription period unless otherwise set forth in the Order Form. This Agreement shall remain in effect until all Order Forms have expired or the Agreement is terminated as provided below. The Initial Term and all renewal periods shall constitute the "Term."

4.2 Termination for Breach. Either Party may terminate this Agreement in the event of the other Party's failure to comply with any material term of this Agreement and such noncompliance remains uncured for more than thirty (30) days after receipt of written notice thereof.

4.3 Suspension. Upon ten (10) days' written notice to Customer, DB may suspend the SaaS Service in whole or in part if Customer fails to make any payment when due under this Agreement or under any other agreement entered into by the Parties. Upon receipt of payment in full of all overdue amounts, provided Customer is not otherwise in breach of this Agreement or any other agreement entered into by the Parties, DB shall promptly restore the suspended SaaS Service. DB may also suspend the SaaS Service in whole or in part if Customer otherwise breaches any term of this Agreement or any

other agreement entered into by the Parties and fails to cure such breach within thirty (30) days after receipt of notice of the breach from DB. Notwithstanding the foregoing, DB may immediately suspend the SaaS Service, without prior notice to Customer, in order to avoid or mitigate serious harm to DB or the SaaS Service. Any suspension or termination under this Agreement shall be without limitation of any other right or remedy available to DB.

4.4 Bankruptcy. Either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party has a receiver or similar party appointed for all or substantially all of its property, is declared insolvent by a court of competent jurisdiction, ceases to do business in the ordinary course, files a petition in bankruptcy, has a petition filed against it in bankruptcy that is not dismissed within sixty (60) days, becomes the subject of any court or administrative proceeding related to its liquidation or insolvency (whether voluntary or involuntary) that is not dismissed within sixty (60) days, or makes an assignment for the benefit of its creditors.

4.5 Effect of Termination of Agreement. Upon the expiration or termination of this Agreement:

4.5.1 All Subscriptions shall immediately terminate and Section 4.6 shall apply;

4.5.2 All SOWs shall immediately terminate, DB shall cease performing any Consulting Services thereunder, and Customer shall pay all unpaid amounts for Consulting Services provided and expenses incurred (including any non-cancelable expenses) under such SOWs within ten (10) days following the termination or expiration;

4.5.3 Customer shall pay all other unpaid amounts under this Agreement within ten (10) days following the termination or expiration;

4.5.4 Customer shall promptly destroy all copies of the Local Software in its possession or control and, if requested by DB, shall certify the same to DB in writing; and

4.5.5 If requested by a Party, the other Party shall promptly destroy or return to the requesting Party, as directed, all of the requesting Party's Confidential Information, and other materials of the requesting Party in such other Party's possession or under its control. Notwithstanding the foregoing, each Party shall be entitled to retain, subject to Section 12, any records to the extent it has been advised by counsel that such retention is required to comply with applicable law or regulation.

4.6 Effect of Termination of Subscription. Upon the expiration or termination of any Subscription:

4.6.1 DB will terminate access to the SaaS Service for that Subscription, all rights and licenses granted by DB pursuant to this Agreement for that Subscription shall immediately terminate, and Customer shall immediately cease using the SaaS Service and Local Software for that Subscription; and

4.6.2 Customer shall pay all unpaid amounts (including without limitation all non-cancelable Subscription Fees not yet paid) with respect to that Subscription within ten (10) days following the termination or expiration.

5. FEES AND PAYMENT TERMS

5.1 Subscription Fees and SaaS Services Fees. "Subscription Fees" means the fees payable by Customer to DB or authorized reseller for each Subscription. "SaaS Service Platform Fees" means the fees payable by Customer for establishing and maintaining an account for the SaaS Service. The SaaS Service Platform Fees remain the same regardless of the number of subscriptions in place at any given time. Unless otherwise set forth in the Order Form, the Subscription Fees and SaaS Services Platform Fees shall be due on an annual basis in advance for each year of the Term. All Subscription Fees and SaaS Services Platform Fees are non-cancelable and nonrefundable, except to the extent explicitly stated otherwise in this Agreement.

5.2 Late Payments. Payments which are not received by the due date shall bear interest from the due date at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under then applicable law, except to the extent the payment is disputed by Customer in good faith prior to the due date of such payment and Customer is cooperating diligently to resolve the dispute. Customer shall bear any costs and expenses (including attorneys' fees) incurred by DB in collecting any amounts due hereunder.

5.3 Fee Increases. For each year of the Term after the Initial Term, the Subscription Fees and SaaS Service Platform Fees are subject to increase. DB will provide notice of any such increase no less than sixty (60) days prior to the first day of the commencement of the next year of the Term (such notice may be provided in an invoice).

5.4 Taxes. Excluding taxes based on DB's net income, Customer is liable for all sales, use, value added, consumption, and other taxes, duties and customs fees relating to all fees payable under this Agreement whether or not DB invoices Customer for such taxes, duties or customs fees, unless Customer has provided DB with a valid tax exemption.

6. IMPLEMENTATION AND OTHER CONSULTING SERVICES

6.1 If Customer desires (a) DB's assistance in establishing an initial implementation and configuration of any Connection, (b) DB training on the use of the SaaS Service and Local Software with any Connection and/or (c) other consulting services related to the SaaS Services, the Parties may mutually agree upon a statement of work ("SOW") setting forth the details related to such services ("Consulting Services"), the fees therefor, and other details related thereto. The SOW shall be in substantially the form attached hereto as Exhibit A.

6.2 Customer shall pay DB the fees set forth in the SOW for the Consulting Services. In addition, Customer shall reimburse DB for reasonable pre-approved out-of-pocket telephone, travel, or other expenses incurred by DB in performing the Consulting Services. DB shall invoice Customer for all Consulting Services and pre-approved expenses on a monthly basis as performed or incurred, unless otherwise provided in the SOW. All invoices shall be due and payable within thirty (30) days from receipt of DB's invoice.

6.3 Customer shall cooperate fully with DB in DB's provision of the Consulting Services, including without limitation by (a) providing DB, in a timely fashion, with access to personnel and information, and assistance with respect to Data Sources, Data Targets and systems and (b) performing all tasks and providing all decisions in a timely fashion and as reasonably required or requested for the performance by DB of the Consulting Services.

6.4 All Consulting Services shall be deemed accepted by Customer upon receipt. DB warrants to Customer that any Consulting Services shall be performed in a professional and workmanlike manner. DB's entire liability and Customer's exclusive remedy shall be for DB to re-perform the Consulting Service that do not meet this limited warranty, or if re-performance is not practical (as determined by DB), DB may terminate the SOW by notice to Customer and refund to Customer any amounts paid by Customer for the applicable Consulting Services pursuant to such SOW. DB MAKES NO OTHER WARRANTY OR REPRESENTATION WHATSOEVER WITH RESPECT TO THE CONSULTING SERVICES.

7. LIMITED WARRANTY

7.1 DB warrants that the SaaS Service will perform substantially in accordance with the Documentation during the Term. In the event of receipt of written notice from Customer to DB of any breach of this warranty, DB shall use commercially reasonable efforts to (a) fix the SaaS Service so that it conforms to this warranty; or (b) identify or make available a work-around or alternative approach that achieves substantially the same functionality. If (i) DB fails to resolve the issue as described in (a) or (b) above within thirty (30) days of Customer's notice and (ii) the breach has the effect of materially diminishing the functionality and value of the SaaS Service as a whole, then Customer may terminate the SaaS Service by written notice to DB, whereupon DB shall refund to Customer the Subscription Fees and SaaS Service Platform Fees paid by Customer for the remainder of the Term, calculated on a straight-line pro rata basis. The foregoing sets forth the exclusive remedies of Customer, and the sole liability of DB, in the event of any breach of the warranty set forth in this Section.

7.2 DB DOES NOT WARRANT THAT THE SAAS SERVICE OR LOCAL SOFTWARE IS ERROR-FREE, OR WILL MEET CUSTOMER'S EXPECTATIONS, OR THAT THE SAAS SERVICE OR LOCAL SOFTWARE WILL RUN UNINTERRUPTED, OR THAT ALL ERRORS CAN OR WILL BE CORRECTED. ANY BETA OR OTHER PRE-COMMERCIAL VERSIONS OF THE SAAS SERVICE OR LOCAL SOFTWARE, AND ALL ASSOCIATED MATERIALS, ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE FOREGOING, DB WILL NOT BE LIABLE FOR ANY PROBLEMS WITH THE SAAS SERVICE ATTRIBUTABLE TO THE INTERNET, FORCE MAJEURE, OR CUSTOMER'S NETWORK OR ABILITY TO ACCESS THE INTERNET.

7.3 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET OUT IN THIS AGREEMENT, DB DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER REPRESENTATIONS AND WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, SECURITY AND FITNESS FOR PARTICULAR PURPOSE.

8. INTELLECTUAL PROPERTY

8.1 Definitions. "Intellectual Property" means any and all patents, copyrights, trademarks, service marks and trade names (registered and unregistered), trade secrets, know-how, inventions, licenses and all other intellectual property or proprietary rights throughout the world. "DB IP" means any and all Intellectual Property of DB, including without limitation DB's Intellectual Property in the SaaS Service and underlying software, any and all Connections, the Local Software, the Documentation, and any and all work product arising in connection with the performance of the Consulting Services, including any and all updates, upgrades, configurations, improvements, enhancements, and derivatives of the foregoing.

8.2 Customer Data. As between the Parties, all Customer Data shall remain the property of Customer. For the avoidance of doubt, DB and its employees and agents shall have the right to reproduce, modify, use, host, transmit and display the same in connection with DB's provision of the SaaS Service, Support Services and Consulting Services.

8.3 DB IP. As between the Parties, all Intellectual Property in and to the DB IP are and shall remain the sole property of DB, and Customer shall acquire no right of ownership or use with respect to any DB IP (or any copies thereof) except for the limited rights necessary for use of the SaaS Service. Without limiting the foregoing, Customer acknowledges that the SaaS Service, Connections, Local Software, and Documentation, and the inventions, know-how and methodology embodied therein, are proprietary to, and are the valuable trade secrets of, DB, and Customer shall treat them as DB's Confidential Information.

8.4 Feedback. Customer or its Authorized Users may from time to time provide suggestions, ideas, comments or other feedback ("Feedback") to DB with respect to the SaaS Service or other DB IP. Customer agrees that all Feedback is and shall be given entirely voluntarily and without compensation. To the extent Customer provides such Feedback, however, Customer hereby grants to DB a non-exclusive, irrevocable, perpetual, worldwide, royalty-free, transferable license, with the right to sublicense, to copy, modify, disclose, use and otherwise exploit Feedback in any manner DB chooses, without reference to its source or other obligation to Customer.

8.5 Customer Warranty. Customer represents and warrants that Customer has the right to allow DB to access, integrate, and process the Data Sources, Data Targets and Customer Data in connection with the performance of this Agreement, and that such activities will not (i) infringe any Intellectual Property or any other right of any third party or (ii) breach any applicable term, condition or obligation under any applicable terms of use or other agreement associated with the foregoing.

9. INDEMNIFICATION

9.1 Indemnification by DB. If at any time during the Term, a third party brings a claim, demand, action, suit or proceeding (a "Claim") that the SaaS Service, Local Software or the Documentation infringes any United States copyright, patent, trade secret or trademark, DB shall, as long as Customer is not in default under this Agreement, defend Customer and its directors, officers, successors and permitted assigns ("Customer Indemnitees") against such Claim at DB's expense and, at DB's option, settle any such Claim or provide indemnification for all damages that a court of competent jurisdiction finally awards against the Customer Indemnitees arising from such Claim. If such Claim is made or threatened or, in DB's opinion, may be made, DB may, at its sole option and expense: (a) obtain for Customer the right to continue using the allegedly infringing item(s); (b) replace or modify the allegedly infringing items(s) so that it/they become non-infringing without diminishing their functionality in any material respect; or if (a) and (b) are not practicable in DB's judgment, (c) terminate this Agreement or the affected Subscriptions by written notice to Customer, whereupon DB shall refund to Customer the Subscription Fees paid by Customer for the remainder of the applicable Subscriptions then in effect (and the SaaS Service Base Fee if all Subscriptions are terminated), calculated on a straight-line pro rata basis. DB shall have no obligation hereunder to Customer for any liability arising out of or relating to any allegations or claims of infringement, to the extent the infringement is caused by: (i) a modification by anyone other than DB; (ii) Customer's use other than in accordance with the applicable Documentation or the terms of this Agreement; (iii) use of a version no longer supported by DB; or (iv) use of the SaaS Service in combination with any other hardware, software or other materials not provided by DB where, absent such combination, the SaaS Service would not be infringing; (v) any Data Source, Data Target, Customer Data, or any other data or materials provided by Customer or its Authorized Users; or (vi) any breach of this Agreement. This paragraph states DB's entire liability for any actual or alleged infringement and Customer's sole and exclusive remedy in relation thereto.

9.2 Indemnification by Customer. Customer shall defend, indemnify and hold harmless DB and its affiliates, and their respective directors, officers, employees, consultants, successors and permitted assigns from and against any and all losses, liabilities, damages and expenses (including reasonable attorneys' fees) ("Losses") incurred in connection with a Claim arising from or related to (i) any breach by Customer or Authorized Users, (ii) any Data Source, Data Target, Customer Data, or any other data or materials provided by Customer or its Authorized Users; or (iii) the use of the SaaS Service in violation of law or regulation.

9.3 Indemnification Procedures. A Party seeking any defense or indemnification from the other Party shall (i) provide the other Party with prompt written notice of any Claim and give the other Party the right to control the defense, provided, however that any delay in or failure to provide such notice shall relieve the other Party of its obligation only to the extent that such failure or delay results in material prejudice to the other Party and (ii) reasonably cooperate with the other Party in assisting the defense of the Claim and in the negotiations or settlements of any Claim. The party being defended shall have the right to participate in, but not control, the defense, disposition, and settlement of a Claim and to employ, at its own expense, separate legal counsel of its own choice. No settlement shall be entered into which would (a) admit wrongdoing of any kind by or on behalf of the Party being defended; or (b) impose upon the Party being defended any monetary or other liability or obligation.

10. LIMITATIONS OF LIABILITY

10.1 Damages. DB SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY LOST DATA, LOST PROFITS, COST OF COVER, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES OF ANY KIND FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON, CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND EVEN IF DB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT DB'S LIABILITY FOR DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF CAUSE, CLAIM OR ACTION, WILL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES AND SAAS SERVICE PLATFORM FEES ACTUALLY PAID DB OR PAID TO DB THROUGH AUTHORIZED RESELLER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS THAT GAVE RISE TO THE CLAIM. THE EXISTENCE OF MULTIPLE CAUSES, CLAIMS OR ACTIONS SHALL NOT ENLARGE OR EXTEND THIS LIMIT. NO ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BY LITIGATION, ARBITRATION, OR OTHERWISE, MAY BE INITIATED BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

11. CUSTOMER DATA

11.1 Definition. "Customer Data" means data Customer (including its Authorized Users) input into the SaaS Service or transmit through the SaaS Service.

11.2 Limitations on Customer Data. Customer agrees that the Customer Data will not include: (i) any information, or documents or technical data that are classified, Controlled Unclassified Information, ITAR controlled or otherwise determined by the United States Government or by a foreign government to require protection against unauthorized disclosure for reasons of national security, (ii) any data that is "protected health information, including any medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual" and/or any other data subject to the U.S. "Health Insurance Portability & Accountability Act of 1996" and regulations promulgated under that Act, as amended from time to time (collectively "HIPAA"), and/or (iii) any other data the provision or use of which would violate applicable law or regulation (including without limitation as they relate to privacy or use of personal data or information) or any third party rights.

11.3 Use of Customer Data by DB. DB shall treat all Customer Data as Customer's Confidential Information and shall only use the Customer Data to (i) to provide the SaaS Service, Support Services and Consulting Services and otherwise perform DB's obligations, (ii) to monitor Customer's use of the SaaS Service and compliance with this Agreement, (iii) for security and technical support purposes, for purposes of complying with DB's obligations to Customer, and for related purposes, and (iv) to analyze and improve the SaaS Service.

11.4 Security. DB shall have and maintain, and require that its third-party hosting provider have and maintain, reasonable administrative, technical, and physical measures for the security of the Customer Data. DB shall only use reputable third party hosting providers to host the SaaS Service (such as Amazon Web Services or Microsoft Azure).

11.5 Backup of Customer Data. All Customer Data originates from Customer, therefore Customer, not DB, is responsible for backing up all Customer Data.

11.6 Data Processing Agreement. To the extent that UK GDPR, EU GDPR, or North American Data Protection Law applies to the processing of Customer Data, the DB Data Processing Addendum ([click here to see the Data Processing Addendum](#)), which sets out additional data protection obligations with respect to the processing of Customer Data, is incorporated into and forms an integral part of these Terms and Conditions.

12. NONDISCLOSURE OBLIGATIONS

12.1 Confidential Information. During the Term, each Party ("Recipient") may have access to confidential or proprietary information ("Confidential Information") of the other Party ("Discloser"). DB's Confidential Information includes, without limitation, the SaaS Service (and its underlying software), the Local Software, the Documentation, and other DB IP, and this Agreement and the terms and conditions and pricing contained herein. Customer's Confidential Information includes the Customer Data. Recipient shall not disclose, orally or in writing or otherwise, any Confidential Information of Discloser to any third party without the prior written consent of the Discloser, except as expressly provided herein. Recipient agrees

to access and use any Confidential Information of Discloser solely for purposes of performing Recipient's obligations or exercising its rights under this Agreement and for no other purpose without the prior written consent of Discloser.

12.2 Degree of Care. Recipient shall protect Discloser's Confidential Information with at least the same degree of care and confidentiality as the Recipient utilizes for its own information that it does not wish disclosed to the public, but not less than a reasonable standard of care.

12.3 Exceptions. This Agreement imposes no obligation upon the Recipient with respect to the Discloser's Confidential Information which Recipient can establish by legally sufficient evidence: (i) was, prior to receipt from Discloser, in the possession of, or rightfully known by Recipient, without an obligation to maintain its confidentiality; (ii) is or becomes generally known to the public without a violation of an obligation of confidentiality owed to the Discloser; or (iii) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality.

12.4 Permitted Access and Use. Recipient may disclose and provide access to the Discloser's Confidential Information only to Recipient's employees, consultants, contractors and Authorized Users (collectively, "Representatives") who need to know or have access to such Confidential Information in order for the Recipient to perform its obligations or exercise its rights hereunder and who are bound by written obligations of confidentiality and non-use with respect to such Confidential Information at least as stringent as those set forth in this Section 12; provided that, DB may rely on the standard confidentiality provisions included in its agreements with its third party hosting providers. Representatives include, without limitation, DB's third-party hosting provider in the case of DB as Recipient. In no case whatsoever shall Customer disclose any Confidential Information of DB to a competitor of DB (including but not limited to Boomi, Inc. (a Dell Technologies business), Workato, Inc., Zapier Inc., TIBCO Software Inc., and Tray.io, Inc.). The Parties intend for the foregoing to permit disclosure to accountants, attorneys and tax advisors providing services to the Recipient under obligations of confidentiality and non-use. Recipient will be liable for any breach of this Section 12 by any of its Representatives. To the extent Recipient may be required to disclose Confidential Information by law or government or court order or duly authorized subpoena, Recipient may make such disclosure, provided that Recipient promptly notifies Discloser of such requirement prior to disclosure, and Recipient makes diligent efforts to avoid and/or limit disclosure and, upon Discloser's request, uses reasonable efforts to assist the Discloser to obtain a protective order, confidential treatment or other appropriate remedy.

13. GENERAL PROVISIONS

13.1 Notices. All notices and other communications required or permitted by this Agreement shall be sufficient if in writing and sent by certified or registered mail with postage prepaid, return receipt requested or delivery confirmation required, overnight courier with fees paid by sender, delivery confirmation required, or personal delivery. If addressed to DB, such notice or communication must be addressed to the attention of its President at the addresses indicated on the first page of these Service Terms, and if addressed to Customer, it must be addressed to the attention of its President at the most recent address of record that DB has on file for the Customer. Any notice or other communication sent by overnight delivery service or by certified or registered mail, shall be presumed received on the day purportedly delivered or refused as evidenced by the delivery confirmation or return receipt. Either Party may change its contact information giving written notice to the other Party in the manner provided in this Section.

13.2 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Customer may not assign or transfer this Agreement (by operation of law, change of control, or otherwise), grant a security interest in this Agreement or the Local Software or Documentation, or sublicense the SaaS Service or Local Software, without the prior written consent of DB, and any assignment, transfer, grant or sublicense without such consent shall be null and void. Notwithstanding the foregoing, in the event of a merger, consolidation or sale of all or substantially all of the assets of Customer, Customer may assign this Agreement, without the consent of DB, to the merged, consolidated or acquiring entity ("Assignee"), provided: (i) the Assignee is not a competitor of DB; (ii) the Assignee possesses sufficient resources (financial or otherwise) to perform Customer's obligations under this Agreement; (iii) Customer provides at least fifteen (15) days prior written notice of any such proposed assignment and (iv) within a reasonable period after demand therefore by DB (not to exceed thirty (30) days), the Assignee executes an amendment to this Agreement assuming all of Customer's obligations under this Agreement. Customer shall notify DB of such assignment or transfer within fifteen (15) days of its occurrence. DB may freely assign or transfer this Agreement and its rights hereunder. DB has the right to subcontract its performance under this Agreement, in-whole or in-part.

13.3 Survival. The terms of Sections 1 ("Definitions"), 3 ("Other Customer Responsibilities"), 4 ("Term and Termination"), 5 ("Fees and Payment Terms"), 6.2 (payment for Consulting Services), 7 ("Limited Warranty"), 8 ("Intellectual Property"), 9 ("Indemnification"), 10 ("Limitations of Liability"), 12 ("Nondisclosure Obligations"), and 13 ("General Provisions"), and any other terms that by their nature should survive, shall survive the expiration or termination of this Agreement.

13.4 Governing Law. This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its laws governing conflicts of law. The exclusive jurisdiction and venue of any actions arising out of, or relating to or in any way connected with this Agreement, its negotiation or termination, or services provided or to be provided by DB, shall be in the Boston, Massachusetts (or its successor), except that actions to enforce a judgment or an arbitral award or for injunctive or other equitable relief may be filed in any court of competent jurisdiction.

13.5 Enumeration and Headings. Enumeration and headings are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

13.6 Publicity. Customer hereby grants DB the right to issue a press release announcing that Customer has become a customer of DB, and to reproduce and display Customer's name, logo and trademarks on DB's website and in brochures, social media and other marketing materials for the purpose of identifying DB's relationship with Customer. Except as provided in the preceding sentence, all media releases, public announcements and public disclosures by either Party relating to this Agreement or its subject matter shall require the mutual approval of the Parties.

13.7 No Third Party Beneficiaries. This Agreement is not intended, nor shall it be interpreted, to confer any benefit, right or privilege in any person or entity not a party hereto, except for the third-party indemnitees under Section 9 (Indemnification).

13.8 Independent Contractor. The Parties hereto are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties hereto. Neither Party may create or incur any liability or obligation for or on behalf of the other Party, except may be expressly provided in this Agreement.

13.9 Conflicting Terms. The provisions of these Service Terms shall prevail and govern in the event of any conflict or inconsistency between the provisions of these Service Terms, on the one hand, and those in any Order Form, SOW, or other exhibit, supplement or attachment, on the other hand, unless such other document expressly provides that it shall govern with respect to such conflict.

13.10 Severability. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement and replaced by a valid provision which approximates as closely as possible the intent of the Parties hereto. All remaining provisions shall be given full force and effect.

13.11 Equitable Relief. Each Party agrees that either Party's violation of the provisions of Sections 3.1, 8, 11.2 and/or 12 may cause immediate and irreparable harm to the other Party for which money damages may not constitute an adequate remedy at law. Therefore, the Parties agree that notwithstanding anything to the contrary in Section 13.4 above, in the event either Party breaches or threatens to breach said provisions or covenants, the other Party shall have the right to seek, in any court of competent jurisdiction, an injunction to restrain said breach or threatened breach, without posting any bond or other security.

13.12 Force Majeure. DB shall not be liable for any failure or delay in performance in the event that such failure or delay is caused, directly or indirectly, by to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, pandemic, destruction of production facilities, insurrection, inability to obtain materials, labor, equipment, transportation or energy sufficient to meet needs, or any other cause beyond the control of DB.

13.13 Entire Agreement. This Agreement constitutes the entire agreement between DB and Customer with respect to the subject matter hereof and supersedes all prior agreements, statements, promises, understandings and negotiations, whether written or oral, regarding the subject matter hereof. Any purchase order, order release, acknowledgement, or like document submitted by Customer in connection with this Agreement shall be subject to the terms and conditions of this Agreement, and nothing contained in any such document shall be used to modify, interpret, supplement, add to, or alter in any way the terms and conditions of this Agreement.

13.14 Use by U.S. Government. The Local Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Local Software or documentation by the U.S. Government is prohibited except as expressly permitted by the terms of this Agreement.

13.15 Amendment; Waiver. No waiver, consent, modification, amendment or change of the terms of this Agreement or any SOW shall bind either Party unless in writing and signed by duly authorized representatives of DB and Customer.

End of Terms and Conditions