



**HAZELCAST CLOUD ENTERPRISE MASTER SUBSCRIPTION AGREEMENT
FOR CLOUD SERVICE PROVIDERS**

1. Scope.

- (a) **Terms and Conditions.** This Hazelcast Cloud Enterprise Master Subscription Agreement for Cloud Service Providers (the “MSA”) sets forth the terms and conditions applicable to the licensing of Software, regardless of how deployed via the Cloud Service Provider, and the provision of Support Services by Hazelcast via the Cloud Service Provider (“Seller”) to the Party subscribing to the Services (“Customer”) through a Marketplace. Seller’s offer of the Software as a MSA Listing on the Marketplace, and Customer’s purchase of the corresponding Subscription on the Marketplace, constitutes each Party’s respective acceptance of this MSA and their entry into this Agreement (defined below) with respect to the Subscription. Unless defined elsewhere in this MSA, terms in initial capital letters have the meanings set forth in Section 14. Customer and Seller may be referred to collectively as the “Parties” or individually as a “Party”.
- (b) **Software Subscription.** Seller will supply and sell to Customer, and Customer will license and purchase, respectively, a Subscription to the Licensed Materials and Services as set forth in the Marketplace listing in accordance with this Agreement. Services may be targeted for specific geographic regions, and Support Services may vary by geography. A Subscription may be provided on a various basis through the functionality available through Marketplace or the Services. The fee or rate for the Subscription is set forth in the applicable MSA Listing. For Subscriptions provided on a usage basis, upon request by Customer, Seller will provide sufficient documentation from its books and records to allow Customer to verify the metered usage charged to Customer for the Subscription.
- (c) **Agreement.** Each Subscription is subject to and governed by this MSA, the applicable Marketplace listing and any amendments to any of the foregoing as may be agreed upon by the Parties, which together constitute the entire agreement between Customer and Seller. Each Subscription is a separate agreement between Customer and Seller. In the event of any conflict between the terms and conditions of the various components of this Agreement, the following order of precedence will apply: (1) any amendment agreed upon by the parties, with any Order Form constituting an amendment, (2) this MSA, (3) and the MSA Listing.

2. DEFINITIONS

- (a) **“Applicable Laws and Regulations”** means any and all laws, ordinances, constitutions, regulations, statutes, treaties, rules, codes, licenses, certificates, franchises, permits, principles of common law, requirements and orders adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any governmental body having jurisdiction over a party or Customer Data.
- (b) **“Cloud Service Provider”** means a third-party company offering a cloud-based platform, infrastructure, application, or storage services.
- (c) **“Customer Data”** means electronic data, content, and information submitted to the Services by or on behalf of Customer.
- (d) **“Data Pack”** means the data quantities and transmission rates that the Customer may use in connection with the Services, including any additional terms and conditions, as specified in an Order Form.
- (e) **“Documentation”** means the on-line documentation Hazelcast provides for use with the Services and all other functional and technical specifications for the Services that are typically provided to other Hazelcast customers.
- (f) **“Marketplace”** means the software marketplace operated by the Cloud Service Provider as it may be updated from time to time.
- (g) **“Order Form”** means the details described in an ordering document regarding the subscription to be ordered by Customer, including the Subscription term, start and end date, the Services to be provided by Hazelcast, the price of the Subscription and other relevant details.
- (h) **“Services”** means the Hazelcast managed hosted service, all Data Packs provided to Customer in connection with this Agreement, and all Technology provided by Hazelcast in connection with the operation or provision of such managed services.

- (i) **“Support Services”** means the technical support services provided to Customers, as further described in **Exhibit A** and in a related Order Form.
- (j) **“Subscription”** means the time limited right to use the Services and receive technical support and Services updates, as specified in an Order Form. Subscriptions excludes Data Packs.
- (k) **“Technology”** means all ideas, concepts, inventions, systems, platforms, software, interfaces, tools, utilities, templates, forms, documentation, content, training materials, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information.
- (l) **“User”** means an individual who is authorized by Customer to use the Services. Users may include, for example, Customer’s employees, consultants, contractors and agents.

3. USE OF THE SERVICES

- (a) **Services.** Subject to the terms and conditions of the Agreement and executed Order Forms, Hazelcast shall make the Services and Support Services available to Customer in accordance with the Service Level Agreement in **Exhibit A**. Hazelcast grants Customer the world-wide, non-exclusive right to use the Services solely for Customer’s internal business use.
- (b) **Customer Responsibilities.** Customer is responsible for 1) properly configuring the Services, 2) maintaining data security for any portion of the Services under Customer’s control, 3) monitoring Customer’s use of the Data Packs, and 4) the backup of Customer’s Data. Customer acknowledges that the total fees to use the Services will vary depending upon Customer’s selected configuration.
- (c) **Customer Warranties.** Customer represents, warrants and covenants that (i) all Customer Data provided hereunder has been collected and provided by or on behalf of Customer in accordance with all Applicable Laws and Regulations; (ii) it shall only use Services in accordance with all Applicable Laws and Regulations, this Agreement and the Documentation. Unless otherwise agreed by the parties, Hazelcast is not a “Business Associate” under HIPAA, and Customer will not provide any protected health information to Hazelcast.
- (d) **Authorized Users.** Subject to the limitations set forth in the Order Form, Customer shall have the right to access and use the Services. Customer must register to use the Service and must create a username and password and provide Hazelcast with the information requested in the registration process, including Customer’s email address. Customer represents and warrants that it will provide complete and accurate information during the registration process and will update it to ensure it remains accurate. Customer may share access credentials with other individuals for purposes of using the Services, provided that absent misuse by Hazelcast or its agents, Customer will remain responsible for all use of the Services initiated using Customer’s access credentials. Customer is responsible for maintaining the security of its account, including the passwords. Customer shall be responsible for acts, omissions or breaches hereunder by any of Customer’s Users or any other individuals using Customer’s account or credentials for the Services, including the use of Data Packs.
- (e) **Usage Restrictions.** Customer will not directly or indirectly (i) make the Services available to anyone other than Customer or its Users; (ii) sell, resell, license, sublicense, distribute, rent or lease the Services, offer it “as-a-Service” or embedded in another commercially distributed service of Customer or a third-party, or include any Services in a service bureau or outsourcing offering; (iii) store or transmit material or data on or through the Services in violation of third-party rights, including without limitation privacy rights or any contract to which Customer is a party; (iv) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; (v) attempt to gain unauthorized access to the Services or its related systems or networks; (vi) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit such as a Data Pack; (vii) copy the Services or any part, feature, function or user interface thereof; (viii) access or use the Services for benchmarking or similar competitive analysis purposes or in order to build a competitive product or service; or (ix) except to the extent that the underlying software is open source, decompile, disassemble, decipher or reverse engineer the Services, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services, (except to the extent such restriction is expressly prohibited by applicable statutory law).
- (f) **License to Customer Data.** Customer hereby grants Hazelcast a non-exclusive, worldwide, royalty-free, fully paid-up right and license to use, copy, access, process, reproduce, perform, display, modify, distribute and transmit the Customer Data in connection with the Services to Customer as set forth in this Agreement. Customer acknowledges that the performance of the Services depends upon the proper integration of the Services with Customer’s own software applications.
- (g) **Related Services.** Hazelcast provides services for training in the use and operation of the Services and for installation and implementation of, and/or configuration services for the Services that are in addition to the Support Services (the “Related Services”). The performance of Related Services does not contemplate any development work or creation of software or other works of authorship (collectively “Work Product”), nor any form of software license nor Work Product deliverable to be provided

by Hazelcast to the Customer. To the extent Hazelcast is required by the Customer to perform Related Services, such Related Services and respective fees shall be described in the applicable Order Form. Hazelcast may submit invoices for any Related Services upon execution of the applicable Order Form by both parties and after performance of Related Services by Hazelcast.

- (h) **Feedback.** Customer may provide suggestions, enhancement requests, and recommendations about the Service, including information performance, its ease of use, features that may be missing, and any bugs encountered during the use of the software (“**Feedback**”). Customer hereby grants Hazelcast a perpetual, non-exclusive, worldwide, fully paid up license to incorporate collected Feedback into the Services without any restriction or payment.

4. FEES AND EXPENSES

- (a) **Services Subscriptions.** All Services Subscriptions and Data Pack credits are non-transferrable, either in-whole or in-part to any third-party including Customer affiliates. During the Term, Customer may purchase additional Subscriptions or Data Pack credits to expand the Services available for consumption. Data Pack terms of use are described in an Order Form, including requirements to purchase Data Pack credits, rights to roll-over unused Data Pack credits and rights to refund unused Data Pack credits.
- (b) **Services Credits Calculation.** For an SLA failure, service credit is measured against the specific Services that did not meet the SLA. To the extent Customer claims and earns service credits in accordance with the SLA, Customer may only exchange such credits for additional Services and not for Data Packs credit or cash.
- (c) **Fees; Payment.** Customer will timely pay all undisputed fees or charges that arise under this Agreement. Unless otherwise set forth in the Subscription details an Order Form, undisputed amounts are due and payable within thirty (30) days following Customer’s receipt of the applicable invoice. Except as otherwise specified in this Agreement, (i) fees are quoted and payable in United States dollars (ii) fees are based on subscriptions purchased, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and the subscriptions purchased cannot be decreased or exchanged for alternative subscriptions.
- (d) **Taxes.** Each Party will be responsible, as required under applicable Law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments under this Agreement. Applicable taxes and duties may be due in addition to the fees or rates payable by Customer. Seller may charge and Customer will pay, where applicable, national, state or local sales or use taxes, or value added or goods and services tax, or withholding or other taxes (“**Taxes**”). Where required by local legislation, Seller may charge for Taxes in its own name for Subscriptions made by Customers on the Marketplace, and Customer will pay such Taxes. Customer will receive a compliant tax invoice, where required. Seller will be responsible for all other taxes or fees arising (including interest and penalties) from transactions and the documentation of transactions under this Agreement. Upon request, Customer will provide such information to Seller as reasonably required to determine whether Seller is obligated to collect Taxes from Customer. Seller will not collect (or will refund to Customer), and Customer will not be obligated to pay (or will be entitled to a refund from Seller), any such Tax or duty for which Customer furnishes Seller a properly completed exemption certificate or a direct payment permit certificate or for which Seller claims an available exemption from Tax. Seller will provide Customer with any forms, documents or certifications as may be required for Customer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.
- (e) **Effect of Nonpayment.** Hazelcast may suspend or terminate this Agreement or the Services upon thirty (30) days' written notice if Customer fails to pay any undisputed amount within thirty (30) days of the date on which payment was due. Hazelcast may suspend the use of the Services at any time if Customer’s Data Pack credits are depleted. Undisputed unpaid amounts are subject to interest at the lesser of 1.5% per month or the maximum permitted by law.

5. TERM AND TERMINATION

- (a) **Term.** This Agreement commences when this Agreement is executed by the parties (“**Effective Date**”) and continues until the end date specified in the Order Form, unless terminated earlier in accordance with the terms of Section 4(b) or 4(c) (Termination). (“**Term**”)
- (b) **Termination for Cause.** If either party materially breaches any of its duties or obligations under this Agreement, and such breach is not cured within thirty (30) calendar days of the non-breaching party providing the breaching party of written notice of the breach, the non-breaching party may terminate this Agreement.
- (c) **Suspension for Ongoing Harm.** Hazelcast may, along with reasonably contemporaneous notice to Customer, suspend access to the Services if Hazelcast reasonably concludes that Customer’s Services are being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer’s Services is causing immediate, material and on-going harm to Hazelcast or others. Customer agrees that Hazelcast shall not be liable to Customer nor to any third party for any suspension of the Services under the circumstances described in this Section.

- (d) **Data Deletion.** Upon termination of a subscription, Hazelcast will within a reasonable time delete or destroy all copies of Customer Data in Hazelcast's possession or control, unless legally prohibited. Hazelcast may retain Customer Data in any backups of the Services, but only in the ordinary course of business, provided that any such Customer Data is subject to the terms of the Agreement, including maintenance of Confidentiality.
- (e) **Surviving Provisions.** The sections and subsections titled "Data Deletion," "Disclaimers," "Confidential Information," "Proprietary Rights," "Mutual Indemnification," "Limitation of Liability," and "General Provisions" will survive any termination or expiration if this Agreement.

6. REPRESENTATIONS AND WARRANTIES

- (a) **Representations and Warranties.** Each party represents and warrants that: (i) if it is a corporation or other entity, it is duly organized and validly existing under the laws of the jurisdiction in which it is formed; (ii) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (iii) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.
- (b) **Customer Warranties.** Customer represents, warrants and covenants that (i) all Customer Data provided hereunder has been collected and provided by or on behalf of Customer in accordance with all applicable laws, rules and regulations; (ii) it owns all rights, title and interest in and to the Customer Data, or that Customer has otherwise secured all necessary rights in the Customer Data as may be necessary to permit the access, use and distribution thereof as contemplated by this Agreement; (iii) it shall only use Services in accordance with all Applicable Laws and Regulations and this Agreement and the Documentation; and (iv) unless agreed in the Order Form, if Customer provides Customer Data that is subject to specialized security regimes, including without limitation the Health Insurance Portability and Accountability Act ("HIPAA") and the standards promulgated by the PCI Security Standards Council ("PCI"), Customer shall implement Minimum Encryption for such data. Hazelcast is not a "Business Associate" under HIPAA, and Customer will not provide any protected health information to Hazelcast. For the purpose of this Section, Minimum Encryption means the any of the following standards: AES – 128 bits or higher, TDES/TDEA – triple-length keys, RSA – 2048 bits or higher, ECC – 224 bits or higher, DSA/D-H – 2048/224 bits or higher.
- (c) **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

7. CONFIDENTIAL INFORMATION

- (a) **Definition of Confidential Information.** "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; Hazelcast's Confidential Information includes the Services, and Confidential Information of each party includes the terms and conditions of this Agreement), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information of a Disclosing Party 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 rightfully 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 rightfully received from a third party without breach of any obligation owed to the Disclosing Party or (iv) was independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party.
- (b) **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the Confidential Information of the Disclosing Party as 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 this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, only disclose Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who (A) need that access for purposes consistent with this Agreement and (B) have confidentiality obligations with respect to the Disclosing Party's Confidential Information consistent with those contained herein. Neither party will disclose the terms of this Agreement to any third party other than (1) its Affiliates, legal counsel and accountants or (2) in connection with a bona fide due diligence inquiry for a financing, acquisition or similar transaction, in each case subject to confidentiality obligations consistent with this Agreement, without the other party's prior written consent. A Receiving Party shall be responsible for any breaches of confidentiality obligations hereunder by any third party to whom it discloses the Disclosing Party's Confidential Information. Notwithstanding anything to the

contrary set forth herein, Hazelcast may collect and use data regarding use and performance of the Service to analyze and improve the Service, provided that Hazelcast will not analyze or use Customer Data.

- (c) **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law, 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.

8. PROPRIETARY RIGHTS

- (a) **Customer Data.** As between the parties, except for the licenses set forth herein, all right, title and interest in and to the Customer Data and Customer Confidential Information shall be and remain the sole and exclusive property of Customer.
- (b) **Hazelcast.** As between the parties, all right, title and interest in and to the Hazelcast Confidential Information and Services and all copies, modifications and derivative works thereof shall be and remain the sole and exclusive property of Hazelcast.
- (c) **No License.** Except as expressly set forth herein, no license or other right, title or interest is granted by either party to the other with respect the Confidential Information, Services or Customer Data.

9. INFORMATION SECURITY

- (a) **Hazelcast InfoSec Program.** Hazelcast shall be responsible for establishing and maintaining a commercially reasonable information security program that is designed to: (a) protect the security and confidentiality of the Customer Data; (b) anticipate threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized access to or use of the Customer Data; and (d) require that all subcontractors of Hazelcast who will be accessing the Customer Data, if any, comply with the foregoing. Customer shall use commercially reasonable security and anti-virus and anti-malware measures when uploading Customer Data to, accessing and using the Services and to prevent unauthorized access to, or use of, the Services, and shall notify Hazelcast promptly of any such unauthorized access or use of which it becomes aware. ("Hazelcast InfoSec Program.")
- (b) **Compliance.** Upon Customer request, Hazelcast will provide its then-current SSAE 18 SOC 1 and 2 and ISO 27001 third-party audit reports, which Customer acknowledges are Hazelcast Confidential Information. Customer may annually submit reasonable written requests for updated information regarding the Hazelcast InfoSec Program, and Hazelcast will provide responses in a commercially reasonable timeframe.

10. MUTUAL INDEMNIFICATION

- (a) **Indemnification by Hazelcast.** Hazelcast will defend Customer against any claim, demand, suit or proceeding ("**Claim**") made or brought against Customer by a third party alleging that Customer's use of the Services in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights, and will indemnify and hold harmless Customer from any damages, attorney fees and costs finally awarded to such third parties as a result of, or for any amounts paid by Hazelcast under a settlement of, such Claim made in accordance with the terms of Section 9(d) (Indemnification Procedure). The foregoing obligations do not apply with respect to any Claim based on or arising from (i) the Customer Data; (ii) the Services or portions or components thereof (A) used not strictly in accordance with this Agreement or in an environment or on a platform or with devices for which it was not designed or contemplated; (B) made in whole or in part in accordance with Customer provided specifications; (C) modified, altered or enhanced by a party other than Hazelcast; (D) combined with other products, services, processes, content or materials not supplied by Hazelcast where the alleged infringement would not have occurred without such combination. The foregoing obligations also do not apply to (E) any continuing allegedly infringing activity after being notified thereof or provided modifications that would have avoided the alleged infringement, or (F) any Claims based on or arising out of Customer's or Customer's Users breach of this Agreement ((A) through (F) collectively, the "**Excluded Claims**").
- (b) **Potential Infringement.** If Hazelcast receives information about an infringement or misappropriation claim arising directly out of the Services (and not arising out of an Excluded Claim), Hazelcast may in its discretion and at no cost to Customer (i) modify the Services so that they no longer infringe or misappropriate; (ii) obtain a license for Customer's continued use of the Services in accordance with this Agreement or (iii) if (i) and (ii) are not commercially practicable despite Hazelcast's reasonable efforts, then Hazelcast may terminate Customer's subscription for the Services and Data Packs and refund Customer a pro-rated amount of any prepaid fees covering the remainder of the term of the terminated subscriptions and any remaining unused Data Pack credits. Sections 10(a) and 9(b) state Hazelcast's sole liability, and the Customer's exclusive remedy, for any infringement or misappropriation of third-party intellectual property rights with respect to the Services.
- (c) **Indemnification by Customer.** Customer will defend Hazelcast against any Claim made or brought against Hazelcast by a third party alleging (i) that Customer Data, or Customer's use of the Services in breach of this Agreement, violates, infringes or misappropriates such third party's intellectual property or other proprietary or privacy rights or violates applicable law, order, rule

or regulation; or (ii) any Excluded Claims, and will indemnify and hold harmless Hazelcast from any damages, attorney fees and costs finally awarded to such third parties as a result of, or for any amounts paid by Customer under a settlement of, such Claim made in accordance with the terms of Section 9(d) (Indemnification Procedure).

- (d) **Indemnification Procedure.** Any claim for indemnification hereunder requires that the indemnified party (i) promptly give the indemnifying party written notice of the Claim; (ii) give the indemnifying party sole control of the defense and settlement of the Claim, provided that the indemnifying party may participate in the defense of the Claim with counsel of its choosing at its own expense and further provided that the indemnified party shall not be responsible for any settlement that it does not approve in writing, such approval not to be unreasonably withheld and (iii) give the indemnifying party all reasonable assistance, at indemnifying party's expense.

11. LIMITATION OF LIABILITY

- (a) **NO CONSEQUENTIAL DAMAGES.** EXCEPT FOR LIABILITY ARISING FROM OR RELATED TO: (A) BREACH OF EITHER PARTY'S OBLIGATIONS UNDER SECTION 6 (CONFIDENTIAL INFORMATION), (B) CUSTOMER'S INFRINGEMENT OF HAZELCAST'S INTELLECTUAL PROPERTY OR EXCEEDING THE SCOPE OF THE LICENSES GRANTED IN THIS AGREEMENT AND ANY ORDER FORM, (C) INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, OR (D) DAMAGES IN CONNECTION WITH EITHER PARTY'S FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR RELIANCE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST OR ANTICIPATED REVENUES OR PROFITS) ARISING OUT OF THE AGREEMENT OR CUSTOMER'S USE OF THE SERVICES, ON ANY THEORY OF LIABILITY EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) **LIMITATION OF AMOUNT.** EXCEPT FOR LIABILITY ARISING FROM OR RELATED TO: (A) BREACH OF EITHER PARTY'S OBLIGATIONS UNDER SECTION 6 (CONFIDENTIAL INFORMATION), (B) CUSTOMER'S INFRINGEMENT OF HAZELCAST'S INTELLECTUAL PROPERTY OR EXCEEDING THE SCOPE OF THE LICENSES GRANTED IN THIS AGREEMENT AND ANY ORDER FORM, (C) INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, OR (D) DAMAGES IN CONNECTION WITH EITHER PARTY'S FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR AGGREGATE LIABILITY THAT EXCEEDS THE SUMS ACTUALLY PAID BY CUSTOMER FOR A PERIOD OF TWELVE (12) MONTHS PRIOR TO THE EVENT FROM WHICH THE CLAIM AROSE UNDER THE APPLICABLE ORDER FORM(S).

12. GENERAL PROVISIONS

- (a) **Relationship between Customer and Hazelcast.** The relationship between the parties is that of independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and Customer does not have any authority of any kind to bind or attempt to bind Hazelcast in any respect whatsoever.
- (b) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, excluding those laws relating to conflicts of law. Neither the U.N. Convention of Contracts for the International Sale of Goods nor UCITA will apply. Any dispute arising out of or relating to this Agreement shall be brought in the Superior Court of the State of California, County of San Mateo, or in the United States District Court for the Northern District of California. Each party hereby consents to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of competent jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights. HAZELCAST AND CUSTOMER AGREE NOT TO DEMAND A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM.
- (c) **Force Majeure.** Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use commercially reasonable efforts to minimize the delays caused by any such event beyond its reasonable control. This provision shall not excuse the payment of fees due under this Agreement, provided that Hazelcast continues to provide the Services as set forth herein.
- (d) **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- (e) **Notices.** Any notice given pursuant to this Agreement shall be in writing and delivered to the parties at their respective addresses stated on an applicable Order Form or at such other address designated by written notice hereunder. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if sent by email or facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

- (f) Publicity.** Customer hereby consents to inclusion of its name and logo in client lists that may be published as part of Hazelcast's marketing and promotional efforts.
- (g) Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), upon providing notice to the other party, but without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- (h) Counterparts; Execution.** This Agreement may be executed electronically and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- (i) Entire Agreement.** This Agreement (including any Order Forms and applicable Exhibits) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous and contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and shall control over any different or additional terms of any purchase order, acknowledgement or other non-Hazelcast ordering document, and no terms included in any such purchase order, acknowledgement or other non-Hazelcast ordering document shall apply to the Services. This Agreement may only be amended by an instrument in writing signed by the parties.
- (j) Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect

EXHIBIT A SERVICE AGREEMENT	Environment	Uptime	Service Credit Percentage	LEVEL
This Service Agreement	Single Zone	< 95.0%	10%	Hazelcast Level ("SLA")
	Multi-zone (3-node minimum per production cluster)	99.00%< 99.95% < 99.0%	10% credit 25% credit	

describes the service level policies under which Hazelcast provides the Services to Customer.

All of the service and performance standards set forth in this SLA are subject to Customer's compliance with Hazelcast's technical requirements for the Services as specified in the Documentation, as well as Customer's compliance with the Agreement.

1. Services Availability.

Effective as of the first day Customer's production instance is operational, Hazelcast will meet the Availability excluding excusable downtime ("Excusable Downtime") when providing Services to Customer.

Excusable Downtime includes:

a. Updates and Maintenance

(i) **Scheduled.** To maximize optimal performance of the servers that provide the Services for Customer, Hazelcast will perform routine maintenance and apply standard updates on the servers and to the Services from time-to-time. When Services updates are made, they are typically performed or applied during off-peak hours to ensure maximum availability to Customer. For routine maintenance, Hazelcast will use commercially reasonable efforts to notify Customer at least forty-eight (48) hours in advance. Scheduled updates and maintenance may include but are not limited to: Hazelcast software updates or upgrades, operating system updates or upgrades, TLS and AES key rotations.

(ii) **Emergency.** Hazelcast may need to make emergency updates to address security, privacy, legal, regulatory, or third-party hardware and software issues not foreseen by Hazelcast or within Hazelcast's direct control. In such cases, Hazelcast will apply the update as soon as possible. Customer agrees to cooperate with Hazelcast in the deployment of all such emergency updates. While Hazelcast will use commercially reasonable efforts to notify Customer in advance of any emergency updates, due to the nature of the update, Hazelcast in its sole discretion may not be able to notify Customer until after the update is made.

b. Network Unavailability beyond Hazelcast's Control: Hazelcast's inability to pass incoming and outgoing TCP/IP traffic due to network issues not caused by Hazelcast. This may include systemic disruption of internet carrier telecommunications or equipment, other interruptions of service on the backbone or on the Customer's portion of the network, or interruptions or significant degradations of service caused by denial of service or similar attacks. Network Unavailability Beyond Hazelcast's Control is considered Excusable Downtime for its entire duration and takes precedence over any other downtime cause with respect to calculating Services Availability.

Availability: The percentage of minutes measured over the course of a calendar month that the Services are reachable and accessible by Customer, excluding Excusable Downtime.

2. Services Credits and Early Termination.

If Customer believes that Hazelcast has failed to maintain Availability for a particular month and wishes to receive a Services Credit (as defined below), Customer must log a Zendesk support ticket with Hazelcast within 24 hours of first becoming aware of an event that impacts service availability. SLA claims will be verified against Hazelcast's system records, which will prevail in event of any conflict with Customer records. Availability measurements will be conducted by Hazelcast.

To qualify for a Service Credit, Customer must comply with the following:

1. Customer must include all information necessary for Hazelcast to validate the claim of a Service Failure, including:
 1. a detailed description of the events resulting in Downtime, including Customer's request logs that document the errors and corroborate Customer's claimed outage (with any confidential or sensitive information in the logs removed or redacted);
 2. information regarding the time and duration of the Downtime;
 3. the number and location(s) of affected users (if applicable); and
 4. descriptions of Customer's attempts to resolve the Downtime at the time of occurrence.
2. Customer must reasonably assist Hazelcast in investigating the cause of the Downtime and processing the Customer claim.
3. Customer must comply with its applicable Hazelcast Cloud service agreement, the Documentation and any advice from Hazelcast solution architects and support team.
4. Failure to follow best practices and architectural recommendations will result in forfeiture of service credits.

Subject to the procedures in this section, in the event of a verified Availability failure, Hazelcast will credit Customer's Subscription account (no Data Pack credits) the percentage described in Section 1 ("Services Credits"). Receipt of Services Credits will be Customer's sole and exclusive remedy for any failure or interruption of the Services, except, however, in the event Hazelcast fails to meet any Availability levels set forth in this Exhibit A for the same environment three (3) or more times (with a related series of downtime events considered to be a single event for the purpose of determining this condition for termination) in any six (6) month period ("**Chronic Services Failure**"), and Customer provides notice in writing of same, Customer shall also have the right to terminate the Services and Agreement without the obligation to provide Hazelcast an opportunity to cure, provided that Customer actually terminates the Agreement within thirty (30) days of the most recent event that qualifies as a Chronic Services Failure.

3. Customer Support.

3.1 Definitions

3.1.1 "Business Day" means Monday through Friday in the United States, excluding U.S. federal holidays.

3.1.3 "Error" means a failure of the Services to perform as substantially as described in the Documentation.

3.1.4 "Issue" means an Error that is classified as "Severity 1", "Severity 2", "Severity 3", or "Severity 4".

3.2 Support Conditions

Support is only available in English. Support contacts may request Hazelcast support via telephone or electronic mail.

1. Customer agrees to:
 1. provide Hazelcast with reasonable detail of the nature of and circumstances surrounding the Error,
 2. provide Hazelcast with reasonable access to Customer's environment as necessary to enable Hazelcast to provide Support; and
 3. provide Hazelcast with reasonable cooperation in the diagnosis and resolution of any Errors.

Hazelcast Cloud Enterprise Customers must contact Hazelcast Technical Support by phone (phone numbers are listed in the Hazelcast Support Portal) immediately after opening a Severity 1 or Severity 2 support case to ensure the applicable Initial Response Goal is met.

Hazelcast has no obligation to provide any Support to Customer for any software, hardware or other element of the Customer environment not provided by Hazelcast or if Customer has not used the Software in accordance with Documentation or instructions provided by Hazelcast, including failure to follow implementation procedures.

For new Issues, Customer must provide the following information:

1. Customer account name
2. Username that the User uses to access the Services.
3. Results of any troubleshooting measures Customer may have already undertaken, and a list of steps that can be followed to reproduce the issue.

4. As many other details about the issue as possible, including any co-existing issues and any recent updates or changes that may have been made to the network topology or infrastructure.

For subsequent communications about existing Issues, Customer must provide the following information:

1. Customer's previously assigned case ID and priority level.
2. Any additional details about the Issue since Customer was last in contact with the Hazelcast support resources.

3.3 Response Times

If Customer encounters an Issue, Customer may contact Hazelcast's support services personnel as set forth above. Hazelcast will respond to reported Issues as described in subsection (3.4), below, commencing when Hazelcast actually receives Customer's notice of the Issue (i.e., leaving a message that Hazelcast does not receive does not mean that the response time calculation has commenced).

3.4 Priority Response and Resolution Target Matrix

During case creation, a Hazelcast technical support representative will assign a priority level, based on the standards described in the matrix below:

Priority #	Priority Level	Description	Target Response Time
Severity 4	Low	A question about configuration or a request for a feature.	24 hours
Severity 3	Medium	A medium-to-low impact error that involves partial and/or non-critical loss of functionality for production purposes or development purposes, such as a problem that impairs some operations but allows your operations to continue to function.	4 hours
Severity 2	High	An error within the Software where your system is functioning for production purposes but in a reduced capacity, such as a problem that is causing significant impact to portions of your business operations and productivity, or where the Software is exposed to potential loss or interruption of service.	2 hours (Telephone call must follow opening of online ticket; see details above.)
Severity 1	Urgent	A major production error within the Software that severely impacts your use of the Software for production purposes as stated in the documentation, such as the loss of production data or where production systems are not functioning and no work-around exists.	30 min (Telephone call must follow opening of online ticket; see details above.)

Following issue notification from Customer, Hazelcast will use best efforts to identify a temporary fix, work-around or patch to address S1 or S2 issues until such issues are addressed. Addressing an issue means that the issue is either fully solved or the issue is fixed so that it can be de-escalated to a lower priority status (e.g. S2 to S4). Hazelcast may use any resolution method available (i.e. fixes, workarounds, etc.) to resolve an Issue. Each support request is assigned a case number and the issue is prioritized according to the above matrix.

A case will be closed when a Customer's inquiry is resolved. A resolution is typically one of the following: an answer to the question, a suggestion on how to perform a particular task or an acceptable workaround to a product issue. Customers will be notified of case closures, and this closure notification will always be done via email, to the email address on record.

A case can be re-opened at any time at a Customer's request, if further investigation is required. A new priority level may be assigned at such time.

4. What Is Not Included Within Support Services

4.1 Installation. Assistance with the installation and configuration of third-party hardware or software. Hazelcast does not provide these services.

4.2 Assistance to Customers not in good standing. Access to Hazelcast support resources and Hazelcast's obligations under this Policy are available only to customers whose accounts are in good standing with Hazelcast.

