

**PASS-THROUGH TERMS OF USE**  
**(for Customers of Resellers and Managed Service Providers Under GSA Schedule Contracts)**

These Pass-Through Terms of Use (these “*Terms*”) contain terms and conditions that govern your access and use of Services (as defined below) obtained through a Datadog-authorized reseller or managed service provider. These Terms are a contract between Datadog, Inc., a Delaware (USA) corporation (“*Datadog*”), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“*You*” or “*Ordering Activity*”).

If you are entering into these Terms on behalf of an entity or organization that you represent: (1) all references to “*Customer*” are to that entity or organization and (2) you represent and warrant that you are at least 18 years of age, or have otherwise reached the age of “*majority*” where you reside, and that you have the right, power and authority to enter into these Terms on behalf of Customer.

**These Terms become binding and effective on Customer when you enter into a Customer Order (as defined below) with a Datadog-authorized reseller or managed service provider.**

Capitalized terms not otherwise defined in these Terms will have the respective meanings assigned to them in Section 25. Datadog may modify the non-material terms and conditions of these Terms from time to time, subject to the terms in Section 26 below.

**1. Customer Orders.** These Terms govern Customer’s access and use of Datadog’s hosted Services in connection with a Customer Order between Customer and either a Reseller or an MSP (as applicable, “*Partner*”). Customer acknowledges the agreement between Datadog and Partner authorizing Partner as a Reseller or an MSP (the “*Partner Contract*”) requires Partner to incorporate these Pass-Through Terms into all Customer Orders, and Customer expressly agrees that Datadog shall have the benefit of and right to enforce these Terms against Customer. In the event any provision of these Terms is deemed to conflict with a provision of a Customer Order or other agreement between Customer and Partner with respect to Services or other subject matter of these Terms, the applicable provision of these Terms shall control as between Customer and Datadog.

**2. Access and Use.**

2.1. Subject to a Customer Order and these Terms, Customer may access and use the Services in accordance with the Documentation during the Customer Order Term for Customer’s Environment. As between the Parties, Customer controls Customer’s Environment and its individual components (each, a “*Customer Component*”), whether owned, leased or licensed by Partner or Customer, located on Partner’s or Customer’s premises or cloud-based, used by Partner or Customer on a software-as-a-service basis or otherwise. Customer will be able to use the Services by establishing integrations or other connections to one or more Customer Components (each, a “*Connection*”). By implementing a Connection to a Customer Component, Customer hereby grants to Datadog the right, and is expressly instructing Datadog, to access and interoperate with that Customer Component during the Customer Order Term in order to provide and support the Services. Customer is responsible for complying with all applicable third-party terms, policies and licenses governing its and, if applicable, its Partner’s access and use of Customer Components and associated data (collectively, “*Third-Party Terms*”).

2.2. Through Customer’s configuration and use of Connections and Services, Customer has control over the types and amounts of data from Customer’s Environment that are submitted for Processing by the Services (collectively, “*Customer Data*”). By submitting Customer Data to the Services, Customer hereby grants to Datadog the right, and is expressly instructing Datadog, to Process Customer Data during the Customer Order Term in order to provide and support the Services and as otherwise provided in these Terms.

2.3. All rights granted by each Party to the other under this Section 2 are limited, nonexclusive and, except as otherwise provided in these Terms, non-transferable.

**3. Support.**

3.1. If Customer is using the Services under a Reseller Customer Order, subject to these Terms, Datadog will provide Support to Authorized Users through the Services and by email. Although resolution times are not guaranteed,

Datadog commits to respond to each request for Support from an Authorized User (each, a “*Support Request*”) as follows: (a) within two hours where Customer is unable to access, or there is a severe degradation, of the Services; (b) within four hours where Customer is able to access some features, or there is a mild degradation, of the Services; and (c) within 48 hours in the case of all other Support Requests. Customer’s sole and exclusive remedy for any alleged failure by Datadog to provide Support with reasonable skill, care and diligence following a Support Request shall be re-performance of the applicable Support.

3.2. If Customer is using the Services under an MSP Customer Order, any Support will be provided to Partner and Section 3.1 shall not apply to Customer. Partner will be responsible under an MSP Customer Order for supporting the Services for Customer.

**4. APIs and Tools.** One or more APIs will be available to Customer to assist with Customer’s implementation of Connections, and Datadog makes client libraries available to facilitate Customer’s coding against the API(s). In addition, Authorized Users may install a Datadog-produced software agent on certain Customer Components to support Customer’s collection of Customer Data. The code for these libraries and agents (collectively, “*Ancillary Tools*”) are available in public repositories at <https://github.com/datadog> and are subject to the applicable open source licenses referenced in those repositories. As between the Parties, Customer determines and controls what APIs and Ancillary Tools (if any) to use in connection with the Services. By using an API or Ancillary Tool in connection with the Services, Customer hereby agrees to do so in accordance with the Documentation and, in the case of the Ancillary Tool, with the applicable open source licenses (provided that if an applicable open source license for an Ancillary Tool contradicts rights or restrictions in the Documentation, the license will take precedence). The Ancillary Tools are not “*Services*” or “*Support*” for purposes of these Terms.

**5. Hosting and Other Providers.** Datadog uses third-party hosting providers, other service providers and Datadog Affiliates to support the provision of the Services and Support in the ordinary course of its business, i.e., not specifically for Partner or Customer (collectively, “*Ordinary Course Providers*”). Datadog reserves the right to engage and substitute Ordinary Course Providers as it deems appropriate, but shall: (a) remain responsible to Customer for the provision of the Services and Support as provided in these Terms and (b) be liable for the actions and omissions of its Ordinary Course Providers undertaken in connection with Datadog’s performance of these Terms to the same extent Datadog would be liable if performing the Services or Support directly. In no event shall Partner or providers of Customer Components be deemed Ordinary Course Providers for any purpose under these Terms.

## **6. Security and Privacy.**

6.1. As discussed in the Documentation, each Party has obligations with respect to the security of the Services and Customer Data. Taking into account the nature and types of Customer Data, Datadog will employ administrative, physical and technical measures in accordance with applicable industry practice to protect the Services and prevent the accidental loss or unauthorized access, use, alteration or disclosure of Customer Data under its control during each Customer Order Term.

6.2. Customer is responsible for properly configuring the Services in accordance with the Documentation, enabling single sign-on for Customer’s accounts, and securing access passwords, keys, tokens or other credentials used by Customer in connection with the Services (collectively, “*Customer Credentials*”). Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Services and to promptly notify Datadog if Customer believes (a) any Customer Credentials have been lost, stolen or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Services or Customer Data.

6.3. Except for limited Personal Information in Account Data, Datadog does not require Personal Information for Customer’s access and use of the Services. Customer shall limit Personal Information in Account Data to only that necessary for the creation and administration of its Datadog accounts. With regard to Customer Data, except as may otherwise be expressly provided in applicable Supplemental Terms, Customer shall not use the Services to Process any Sensitive Information and shall use reasonable efforts to restrict the inclusion of other Personal Information in Customer Data. The Documentation provides further information on both filtering Personal Information from, and masking Personal Information in, data before they are submitted to the Services.

6.4. Datadog may Process information about Customer's configuration and use of the Services ("*Usage Data*"), Customer Data and Account Data: (a) to manage Partner's and Customer's accounts, including to calculate fees for the Services; (b) to provide and improve the Services and Support, including to address Support Requests and troubleshoot other issues; and (c) to provide Partner, Customer and Authorized Users insights, service and feature announcements and other reporting. Datadog may also Process Usage Data that has been aggregated and/or anonymized (including, for clarity, that does not allow a third party to identify Partner or Customer as the source of the information): (i) to develop new services and features and (ii) to promote Datadog's services, including, for example, through analyses of patterns and trends. Datadog's Processing of Usage Data, Customer Data and Account Data shall at all times be subject to Datadog's obligations under these Terms, including those of security under Section 6.1 and confidentiality under Section 11; the DPA (as defined in Section 8.1), if applicable; the Supplemental Terms, if applicable; and, with respect to Account Data, the Privacy Policy.

## **7. Customer Responsibilities and Restrictions.**

7.1. As between the Parties, Customer will be solely responsible for: (a) Customer's Environment, including as necessary to enable Authorized Users' access and use of the Services; (b) Account Data, Customer Data and Customer Credentials (including activities conducted with Customer Credentials), subject to Datadog's Processing obligations under these Terms; (c) providing any required notices to, and receiving any required consents and authorizations from, Customer Component providers, Authorized Users and persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials; and (d) ensuring use of the Services is only for Customer's Environment and in accordance with the AUP, Documentation and applicable Third-Party Terms.

7.2. No provision of these Terms includes the right to, and Customer shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users and Partner (if acting as an MSP) to access and use the Services; (b) attempt to gain unauthorized access to any Service or its related systems or networks; (c) use any Service to access Datadog Intellectual Property Rights except as permitted under these Terms; (d) modify, copy or create any derivative work based upon a Service or any portion, feature or function of a Service; (e) resell, distribute or otherwise make available any Service to any third party, including as part of a managed services offering; (f) except to the extent limited by Applicable Law, reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the Services or access or use the Services or Documentation in order to (1) copy ideas, features, functions or graphics, (2) develop competing products or services, or (3) perform competitive analyses; (g) remove, obscure or alter any proprietary notice related to the Services; (h) send or store Malicious Code; (i) use or permit others to use the Services in violation of Applicable Law; or (j) use or permit others to use the Services other than as described in the applicable Customer Order, Documentation and these Terms.

7.3. Datadog reserves the right to investigate potential violations of the above provisions of this Section 7. In the event Datadog reasonably believes a violation has occurred, in addition to any other remedies available at law or in equity (including termination pursuant to Section 13.1), Datadog will have the right to temporarily suspend Authorized Users suspected of the violation from accessing the Services for so long as is reasonably necessary to address the potential violation. Except where Datadog reasonably believes the violations are willful, or in urgent or emergency situations, if Customer is using the Services under a Reseller Customer Order, Datadog will notify Customer of any such suspension in advance (each, a "*Suspension Notice*") and work with Customer in good faith to resolve the potential violation. For clarity, Datadog reserves the right, but does not assume any obligation to Customer (except with respect to the Suspension Notice) or Partner, to take any of the actions described in this Section 7.3. If Datadog determines that an Authorized User has violated the provisions of this Section 7, Datadog will have the right to permanently suspend said Authorized User from accessing the Services. Upon written request, Datadog will provide a written explanation for the permanent suspension of an Authorized User.

**8. Compliance with Applicable Laws.** Each Party agrees to comply with all Applicable Laws with respect to its performance of its obligations and exercise of its rights under these Terms. Without limiting the foregoing:

8.1. Each Party shall comply with Applicable Laws concerning the privacy and protection of Personal Information. Without limiting Section 7.1, Customer will be solely responsible for providing any notices required by Applicable Law to, and receiving any consents and authorizations required by Applicable Law from, persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials. Without limiting Section 6.3 and any applicable Supplemental Terms, if Customer (a) is using the Services under a Reseller Customer Order, (b) believes

Customer Data may include the Personal Information of natural persons located in the European Economic Area, and (c) wishes to execute a Data Processing Addendum (“DPA”) pursuant to the GDPR, Customer may do so by submitting a request by email to [gdpr@datadoghq.com](mailto:gdpr@datadoghq.com). Promptly following Datadog’s receipt of Customer’s request, Datadog will send Customer a DPA ready for execution. If Customer is using the Services under an MSP Customer Order, Partner may submit a request directly to Datadog to execute a DPA in connection with its Partner Contract.

8.2. Each Party shall comply with Applicable Laws concerning anti-bribery and anti-corruption, which may include the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010. As of the date of these Terms and the date of each Customer Order, Customer represents that it has neither received nor been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any employee, agent or representative of Datadog, Partner or either of their Affiliates in connection with any Customer Order or these Terms. Customer agrees to promptly notify Datadog if it learns of any violation of the foregoing. This representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law.

8.3. Each Party shall (a) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (“Export Laws”), including designating countries, entities and persons (“Sanctions Targets”) and (b) not directly or indirectly export, re-export or otherwise deliver Services to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to these Terms under Applicable Laws, including Export Laws.

**9. Pricing and Fees.** Pricing and payment of fees for the Services are solely between Customer and Partner.

**10. Ownership.** As between the Parties: (a) Customer owns all right, title and interest in and to Customer’s Environment and Customer Data, including in each case all associated Intellectual Property Rights, and (b) Datadog owns all right, title and interest in and to the Services, Documentation and Feedback, including in each case all associated Intellectual Property Rights. Except for the rights expressly granted by one Party to the other in these Terms, all rights are reserved by the granting Party.

**11. Confidentiality.**

11.1. As used in these Terms, “Confidential Information” means any information disclosed by one Party, its Affiliates, business partners or their respective employees, agents or contractors (collectively, the “Discloser”) that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes without limitation: (a) Customer Data; (b) information relating to the Discloser’s or its Affiliates’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; and (c) third-party information that the Discloser is obligated to keep confidential. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the “Recipient”) prior to receiving the same from the Discloser in connection with these Terms; (ii) is independently developed by the Recipient without reference to or use of the Discloser’s Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

11.2. The Recipient shall not (a) use the Discloser’s Confidential Information for any purpose outside the scope of these Terms without the Discloser’s prior written consent or (b) disclose the Discloser’s Confidential Information to any person or entity, except to Partner or to the Recipient’s employees, agents, contractors and service providers who (i) are bound by non-use and non-disclosure obligations at least as protective as those contained in these Terms and (ii) have a need to know the Confidential Information for the Recipient to exercise its rights or perform its obligations under these Terms. Notwithstanding the foregoing, the Recipient may disclose the Discloser’s Confidential Information to the limited extent any use or disclosure is required by Applicable Law or a valid and binding order of a governmental body (such as a subpoena or court order), provided that, to the extent permitted under Applicable Law, the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information. Datadog recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor. In the event of any breach or threatened breach by

the Recipient of its obligations under this Section, the Discloser will be entitled to seek any injunctive or other equitable relief available under the applicable law including the Trade Secrets Act, 18 U.S.C. Section 1905 to enforce such obligations.

## **12. Limited Warranty and Disclaimers.**

12.1. DATADOG WARRANTS THAT THE SERVICES, SUPPORT AND ANY OTHER MATERIAL PROVIDED BY DATADOG WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE SERVICES START DATE, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION AND THIS AGREEMENT IN ALL MATERIAL RESPECTS. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, NEITHER PARTY MAKES ANY WARRANTY OR GUARANTEE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12.2. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, ALL SERVICES, SUPPORT AND ANY OTHER MATERIAL ARE PROVIDED BY DATADOG ON AN "AS IS" AND "AS AVAILABLE" BASIS. DATADOG MAKES NO REPRESENTATION OR WARRANTY, AND HAS NO SUPPORT OBLIGATIONS OR LIABILITY, WITH RESPECT TO ANY CUSTOMER COMPONENT. WITHOUT LIMITING THE OTHER PROVISIONS OF THIS SECTION 12, DATADOG MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, DOCUMENTATION, ANCILLARY TOOLS OR ANY OTHER MATERIAL, OR RESULTS OF THE USE THEREOF, WILL: (a) MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE ERROR FREE OR (e) BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH CUSTOMER COMPONENTS. ANY CHANGES TO CUSTOMER COMPONENTS (INCLUDING THEIR UNAVAILABILITY) OR THIRD-PARTY TERMS DURING A CUSTOMER ORDER TERM DO NOT AFFECT CUSTOMER'S OBLIGATIONS UNDER THESE TERMS.

**13. Term and Termination.** Except as otherwise provided in this Section, these Terms continue through the expiration or earlier termination of the last Customer Order to be in effect.

### 13.1. Subscription Termination.

(a) Government Customers. Failure of Datadog and a Government Customer to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, for a Government Customer who is an instrumentality of the U.S., or the corresponding applicable state authority for a Government Customer who is an instrumentality of a State or Local government. Datadog shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(b) Contractor and Subcontractor Customers. Datadog may terminate Contractor or Subcontractor Customer's access to the Services and these Terms (a "Subscription Termination"): (i) if Contractor or Subcontractor Customer materially breaches these Terms, and such breach (if capable of cure) remains uncured 30 days after Datadog provides notice of such breach; (ii) when the Partner Contract terminates where Customer is using the Services under an MSP Customer Order; or (iii) pursuant to Section 14.2. .

13.2. Subject to Datadog's rights under Section 13.1, if Customer is using the Services under a Reseller Customer Order and the Partner Contract terminates, any active subscription to the Services under the Reseller Customer Order shall remain governed by these Terms and in effect until the end of its subscription term.

13.3. Upon expiration or earlier termination of a Customer Order or a Subscription Termination, subject to Section 13.5, all rights granted to Customer with respect to Services will terminate effective as of the effective date of termination and Datadog will have no obligation to provide Services to Partner, Customer or Authorized Users after the effective date of the termination.

13.4. In the event of a Subscription Termination pursuant to Section 14.2, Datadog will refund to Partner upon request a pro rata share of any unused amounts prepaid by Partner under the applicable Customer Order for the Services on the basis of the remaining portion of the current subscription term (a "Pro-Rated Refund"). Datadog will issue the Pro-Rated Refund directly to Partner and any pass-through of some or all of that amount will be between Partner and Customer under the Customer Order. In no event will any termination, expiration or suspension of Services, these Terms, any Customer Order or the Partner Contract give rise to any liability of Datadog to a Contractor or Subcontractor Customer for

refunds or damages. If a Government Customer terminates a Customer Order for convenience, Datadog will be paid a percentage of the contract price reflecting items or services delivered prior to the notice of termination, plus reasonable charges resulting from the termination. This paragraph does not give the Government any right to audit Datadog's records and Datadog shall not be required to comply with the cost accounting standards or contract cost principles for this purpose.

13.5. If Customer is using the Services under a Reseller Customer Order, subject to any applicable shorter Service Plan retention periods, for up to 30 days from the effective date of termination of these Terms, an Authorized User designated by Customer will be permitted to continue to access and download Customer Data that was accessible to Authorized Users through the Services immediately prior to termination. The designated Authorized User's access and use will continue to be subject to the terms of these Terms, provided the Authorized User shall not access or use the Services other than to download Customer Data.

13.6. The provisions set forth in the following Sections, and any other right or obligation of the Parties in these Terms that, by its nature, should survive termination or expiration of these Terms, will survive any expiration or termination of these Terms: 6.4, 7.2, 8 through 15, and 17 through 26.

#### **14. Indemnification.**

14.1. Subject to Sections 14.2 and 14.4, Datadog agrees to defend, indemnify and hold harmless Customer, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "*Customer Indemnitees*"), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, "*Losses*") arising out of or related to any legal claim, suit, action or proceeding (each, an "*Action*") by a third party (other than Partner or its Affiliate) alleging use of the Services as permitted under these Terms infringes such third party's United States patent or copyright, or misappropriates such third party's trade secrets (each, a "*Customer Infringement Claim*"). Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

14.2. If the Services become, or in Datadog's opinion are likely to become, the subject of a Customer Infringement Claim, Datadog may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe or misappropriate; or (c) terminate Customer's access to the Services and these Terms and issue a Pro-Rated Refund to Partner. Datadog will have no obligation to indemnify Customer for a Customer Infringement Claim to the extent it arises from any of the following (collectively, "*Customer-Controlled Matters*"): (i) Customer's Environment, including Connections to Customer Components, whether enabled through APIs, Ancillary Tools or otherwise; (ii) Account Data, Customer Data or Customer Credentials (including activities conducted with Customer Credentials), subject to Datadog's Processing obligations under these Terms; or (iii) use of the Services by Partner (if acting as an MSP), Customer or an Authorized User in a manner that breaches a Partner Contract, Customer Order, Service Plan or these Terms. SECTIONS 14.1 AND 14.2 STATE DATADOG'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

14.3. Subject to Section 14.4, a Contractor and Subcontractor Customers agree to defend, indemnify and hold harmless Datadog, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "*Datadog Indemnities*"), from and against any and all Losses arising out of or related to any Action by a third party arising out of or relating to Customer-Controlled Matters. This Section 14.3 shall not apply to Government Customers.

14.4. A Customer Indemnitee or Datadog Indemnitee ( each, an "*Indemnitee*") seeking indemnification shall promptly notify the other Party (each, an "*Indemnifying Party*"), in writing of any Action for which it seeks indemnification pursuant to Section 14.1 or 14.3 (as applicable) and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 14.4 will not relieve the Indemnifying Party of its obligations under Section 14.1 or 14.3 (as applicable) except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an Action without the Indemnitee's written consent if such settlement shall require action or payment by the Indemnitee.

14.5. None of Partner, its Affiliates or their employees, contractors, agents, officer or directors shall be deemed Customer Indemnitees for purposes of these Terms. Any indemnification obligations Datadog may have to Partner and such other parties are as specified in the Partner Contract.

**15. Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 15, IN NO EVENT SHALL: (a) DATADOG, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS HAVE ANY LIABILITY TO CUSTOMER OR ANY AUTHORIZED USER FOR ANY LOSSES ARISING OUT OF OR RELATING TO (i) PARTNER'S RESALE OF SERVICES TO CUSTOMER, (ii) PARTNER'S PROVISION OF MANAGED SERVICES (INCLUDING THE SERVICES) TO CUSTOMER, (iii) PARTNER'S PROCESSING OF ANY ACCOUNT DATA, CUSTOMER DATA OR CUSTOMER CREDENTIALS OR (iv) ANY CUSTOMER ORDER, SUBJECT TO DATADOG'S OBLIGATIONS UNDER THESE TERMS; (b) EITHER PARTY, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THESE TERMS; AND (c) EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THESE TERMS EXCEED THE FEES PAID TO DATADOG BY PARTNER UNDER THE APPLICABLE CUSTOMER ORDER. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION (COLLECTIVELY, THE "EXCLUSIONS") APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE EXCLUSIONS SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14 OR CUSTOMER'S BREACH OF SECTION 7.2. THE PROVISIONS OF THIS SECTION 15 ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE EXCLUSIONS IN DETERMINING TO ENTER INTO THESE TERMS.

**16. Publicity.** Neither Party shall, except as otherwise required by Applicable Law or stock exchange requirements, issue or release any announcement, statement, press release or other publicity or marketing materials relating to these Terms or otherwise use the other Party's marks or logos without the prior written consent of the other Party; provided, however, that Datadog may (subject to its obligations of non-attribution under Section 6.4) include (1) a Government Customer's name in its lists of Datadog customers, its public website and other promotional material to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 or the relevant State regulation and (2) a Contractor or Subcontractor Customer's name and logo in its lists of Datadog customers, its public website and other promotional material. Datadog agrees to promptly cease such uses of Customer's name and logo following Customer's request sent to [logos@datadoghq.com](mailto:logos@datadoghq.com).

**17. Notices.** Subject to change pursuant to this Section: (a) Datadog's physical address for notices is that of its New York, New York, USA headquarters provided at <https://www.datadoghq.com/about/contact/>, Attn: Legal Notice, and its email address for notices is [legal@datadoghq.com](mailto:legal@datadoghq.com) and (b) Customer's physical and email addresses for notices are those designated in the Services. Notices required or permitted to be given under these Terms shall be in writing and shall be deemed to be sufficiently given: (i) one business day after being sent by overnight courier to the Party's physical address; (ii) three business days after being sent by registered mail, return receipt requested, to the Party's physical address; or (iii) one business day after being sent by email to the Party's email address (provided that (1) the sender does not receive a response that the message could not be delivered or an out-of-office reply and (2) any notice for an indemnifiable Action must be sent by courier or mail pursuant to clause (i) or (ii)). Either Party may change its address(es) for notice by providing notice to the other in accordance with this Section. Notwithstanding the foregoing, any notice required or permitted under these Terms to Customer may be provided by Datadog either to Partner in accordance with the Partner Contract or to Customer, in each case as determined by Datadog in its sole discretion based on the circumstances.

**18. Assignment.** So long as Customer remains current in the payment of all amounts when due, Customer may assign these Terms together with its assignment of all Customer Orders in connection with any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity), or a sale of all or substantially all of Customer's business or assets relating to these Terms to an unaffiliated third party. Subject to the foregoing, Customer may not assign any of its rights or obligation under these Terms, whether by operation of law or otherwise, without Datadog's prior written consent, and any purported assignment in violation of this Section is void. These Terms are binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

**19. U.S. Government Customers.**

**19.1.** The Services and Documentation are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services and Documentation. If Customer or any Authorized User is using Services and Documentation on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, Customer and Customer’s Authorized Users must immediately discontinue use of the Services and Documentation. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

19.2. If any term or condition set forth in this Agreement, (a) allows for the automatic termination of the Government’s license rights or maintenance of Services; (b) allows for the automatic renewal of Services; and/or (d) requires the governing law to be anything other than Federal law, then such term and condition shall not apply to the United States Government, but shall continue to apply to prime contractors and subcontractors of the Government. Furthermore, nothing contained in this Agreement is meant to diminish the rights of the United States Department of Justice as identified in 28 U.S.C. Section 516. Finally, to the extent any term and condition set forth in this Agreement is contrary to United States Federal procurement law or applicable state procurement law, then such term and condition shall not apply to the respective Government Customer, but shall continue to apply to Contractors and Subcontractors Customers.

**20. Relationship of Parties.** The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in these Terms shall constitute one Party as an employee, agent, joint venture partner or servant of another. Customer acknowledges that MSPs and Resellers are not agents or representatives of Datadog, and that Datadog accepts no responsibility for the actions or omissions of Partner.

**21. Third-Party Beneficiaries.** These Terms are for the sole benefit of Datadog and Customer and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on Partner or any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. For clarity: (a) Partner is not a third-party beneficiary of these Terms; (b) Customer is not a third-party beneficiary of any Partner Contract; and (c) Datadog is not a party to any Customer Order or other agreement between Customer and Partner; provided, however, that Datadog is a third-party beneficiary with respect a Customer Order as it relates to these Terms.

**22. Force Majeure.**

**22.1.** For U.S. Federal Government Customers and State and Local Customers, excusable delays shall be governed by FAR 52.212-4(f).

**22.2.** For Contractor and Subcontractor Customers, neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms, when and to the extent such failure or delay is caused by acts of God; flood, fire or explosion; war, terrorism, invasion, riot or other civil unrest; embargoes or blockades in effect on or after the date of these Terms; or national or regional emergency (each of the foregoing, a “*Force Majeure Event*”), in each case, provided the event is outside the reasonable control of the affected Party, the affected Party provides prompt notice to the other Party, stating the period of time the occurrence is expected to continue, and the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**23. Governing Law; Venue.** . The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods are specifically excluded from application to these Terms.

**23.1. U.S. Federal Government Customers.** These Terms are governed by United States Federal law.

**23.2. State and Local Government Customers.** These Terms shall be governed by and construed and enforced in accordance with the laws of Customer’s state and FAR Clause 552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019). Unless otherwise agreed by the parties in writing, any legal action or proceeding arising under or relating to these Terms shall be brought exclusively in the state or federal courts located in the capital city of Customer’s state, and the Parties expressly consent to personal jurisdiction and venue in those courts.

**23.3. Contractor and Subcontractor Customers.** These Terms shall be governed by and construed and enforced in accordance with the laws of the State of New York and FAR Clause 552.238-114 Use of Federal Supply Schedule Contracts



by Non-Federal Entities (May 2019), without giving effect to the choice of law rules of that State. Any legal action or proceeding arising under or relating to these Terms shall be brought exclusively in the state or federal courts located in New York County, New York, USA, and the Parties expressly consent to personal jurisdiction and venue in those courts.

**24. Miscellaneous.** These Terms, together with the AUP and, as and if applicable, Supplemental Terms and DPA, are the complete and exclusive statement of the agreement between the Parties and supersede all proposals, questionnaires and other communications and agreements between the Parties (oral or written) relating to the subject matter of these Terms. Any terms and conditions of any other instrument issued by Partner or Customer in connection with these Terms which are in addition to, inconsistent with or different from the terms and conditions of these Terms shall be of no force or effect. Additionally, these Terms supersede any confidentiality, non-disclosure, evaluation or trial agreement previously entered into by the Parties with respect Customer's or an Affiliate's evaluation of the Services or otherwise with respect to the Services. Except as otherwise provided in Section 26, these Terms may be modified only by a written instrument duly executed by authorized representatives of the Parties. The failure of a Party to exercise or enforce any condition, term or provision of these Terms will not operate as a waiver of such condition, term or provision. Any waiver by either Party of any condition, term or provision of these Terms shall not be construed as a waiver of any other condition, term or provision. If any provision of these Terms is held invalid or unenforceable, the remainder of the Terms shall continue in full force and effect. The headings in these Terms are for reference only and shall not affect the interpretation of these Terms. For purposes of these Terms, the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; the word "or" is not exclusive; and the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to these Terms as a whole.

**25. Definitions.** Capitalized terms not otherwise defined in these Terms shall have the respective meanings assigned to them in this Section 25.

*"Account Data"* means information about Customer that Partner or Customer provides to Datadog in connection with the creation or administration of Customer's Datadog accounts, such as first and last name, user name and email address of an Authorized User or Customer's contact for notices under Section 17. Customer shall ensure that all Account Data is current and accurate at all times during the applicable Customer Order Term, and shall in no event include Sensitive Information in Account Data.

*"Affiliate"* means, with respect to a Party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such Party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of a business entity.

*"API"* means an application programming interface referenced in the Documentation that Datadog maintains and makes available to Customer in connection with the Services.

*"Applicable Laws"* means any and all governmental laws, rules, directives, regulations or Customer Orders that are applicable to a particular Party's performance under these Terms.

*"AUP"* means Datadog's standard Acceptable Use Policy, currently available at <https://www.datadoghq.com/legal/acceptable-use/>.

*"Authorized User"* means an individual employee, agent or contractor of Customer for whom subscriptions to Services have been purchased pursuant to the terms of the applicable Customer Order and these Terms, and who has been supplied user credentials for the Services by Partner or Customer (or by Datadog at Partner's or Customer's request).

*"Contractor and Subcontractor Customers"* means government contractors and subcontractors authorized to use General Services Administration ("GSA") sources of supply and services under OGC 4800.21 (July 19, 2016).

*"Customer Order"* means a completed agreement for Services between Partner and Customer.

*"Customer Order Term"* means, with respect to each Customer Order, the subscription term for the Services specified in the applicable Customer Order.

*“Customer’s Environment”* means, exclusive of Services, the systems, platforms, services, software, devices, sites and/or networks that Customer uses (or, if applicable, Partner uses on Customer’s behalf as an MSP) in Customer’s own internal business operations.

*“Documentation”* means Datadog’s standard user documentation for the Services, currently available at <https://docs.datadoghq.com/>.

*“Feedback”* means bug reports, suggestions or other feedback with respect to the Services or Documentation provided by Customer to Datadog, exclusive of any Customer Confidential Information therein.

*“GDPR”* means the General Data Protection Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing of Directive 95/46/EC.

*“Government Customer”* means all agencies and organizations authorized to use General Services Administration (“GSA”) sources of supply and services under OGC 4800.21 (July 19, 2016) except contractors and subcontractors.

*“Intellectual Property Rights”* means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

*“Malicious Code”* means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

*“MSP”* means a party that is authorized by Datadog to access, use, manage and support the Services as part of its provision of managed services (including the Services) to Customer, and to grant to Customer subscriptions to the Services as a part thereof for Customer’s own internal use.

*“MSP Customer Order”* means a Customer Order entered into by Partner in its capacity as an MSP.

*“Partner Contract”* has the meaning assigned to that term in Section 1, and for the avoidance of doubt, includes any orders for Services entered into between Partner and Datadog.

*“Party”* means each of Datadog and Customer.

*“Personal Information”* means information relating to an identified or identifiable natural person that is protected by Applicable Laws with respect to privacy where the individual resides.

*“Pricing Page”* means the publicly available web page(s) where Datadog publishes its list prices for Services, currently available at <https://www.datadoghq.com/pricing/>.

*“Privacy Policy”* means Datadog’s standard Privacy Policy, currently available at <https://www.datadoghq.com/legal/privacy/>.

*“Process”* means to perform an operation or set of operations on data, content or information, including to submit, transmit, post, transfer, disclose, collect, record, organize, structure, store, adapt or alter; *“Processing”* has a correlative meaning.

*“Reseller”* means a party that is authorized by Datadog to resell subscriptions to the Services to Customer.

*“Reseller Customer Order”* means a Customer Order entered into by Partner in its capacity as a Reseller.

*“Sensitive Information”* means the following categories of Personal Information: (a) government-issued identification numbers, including Social Security numbers; (b) financial account data; (c) biometric, genetic, health or insurance data; (d) financial information; (e) data revealing race, ethnicity, political opinions, religion, philosophical beliefs

or trade union membership; (f) data concerning sex life or sexual orientation; and (g) data relating criminal convictions and offenses. Without limiting the foregoing, the term “Sensitive Information” includes Personal Information that is subject to specific or heightened requirements under Applicable Law or industry standards, such as Social Security numbers in the United States, protected health information under the U.S. Health Insurance Portability and Accountability Act, nonpublic personal information under the U.S. Gramm-Leach-Bliley Act, cardholder data under the PCI Data Security Standard, and special categories of personal data under the GDPR.

“*Service Plan*” means the packaged plan and associated features, as detailed at the Pricing Page, for the hosted Datadog service to which Customer subscribes or otherwise uses following a Customer Order.

“*Services*” means the hosted services to which Customer subscribes through, or otherwise uses following, a Customer Order that are made available by Datadog online via the applicable login page (currently <https://app.datadoghq.com/>) and other web pages designated by Datadog. Datadog may make such changes to the Services as Datadog deems appropriate from time to time, provided such changes do not materially decrease the features or functionality of the Services as they existed at the effective date of these Terms. For purposes of these Terms, the term Services does not include alpha, beta or other pre-commercial releases of a Datadog product or service (or feature of functionality of a Service), which are subject to the Free-Trial Subscription Agreement available at <https://datadoghq.com/legal/free-trial-agreement>.

“*Supplemental Terms*” means additional terms that apply to certain Customer Data, Services, Service Plans and/or customers, including any applicable Service-Specific Terms, currently available at <https://www.datadoghq.com/legal/service-terms/>.

“*Support*” means Datadog’s standard customer support for the Services, currently described at <https://www.datadoghq.com/support/>.

**26. Changes to these Terms.** Datadog may modify the non-material terms and conditions of these Terms at any time by posting a revised version at <https://datadoghq.com/legal/pass-through>, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted; provided, however, that if a Customer Order specifies a fixed term of 12 months or longer, the modifications will instead be effective immediately upon the start of the next renewal term, if any. In either case, if Customer objects to the updated non-material terms and conditions of Terms, as its sole and exclusive remedy, Customer may choose not to renew, including canceling with Partner any terms set to auto-renew. Any material modification to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms. For the avoidance of doubt, any Customer Order is subject to the version of the Terms in effect at the time of the Customer Order.