

Fluree Customer Agreement

This Fluree DB Customer Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of all Fluree DB Product, and is an agreement between Fluree, P.B.C., a public benefit corporation formed under the laws of the State of Delaware (also referred to as “Fluree,” “we,” “us,” or “our”) and you or the entity you represent (“you” or “your”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you download our free software (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Key terms are defined in Section 1.

1. Definitions

“**Affiliate**” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“**Confidential Information**” means information a party designates as confidential or reasonably considers as confidential. This definition shall not include information that is (i) or becomes publicly available through no fault of the recipient, (ii) received from a third party without a duty of confidentiality, (iii) independently developed by the receiving party without breaching this Agreement; or (iv) rightfully known or lawfully in the possession of the receiving party prior to disclosure from the other party.

“**Customer Data**” means all data, including all text, sound, software, or image files that are provided to us by, or on behalf of, you or your Affiliates through your use of the Services.

“**Documentation**” means the instructions, specifications and information regarding the Software.

“**End User**” means you or any person permitted by you to access the Services or otherwise use the Services.

“**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.

“**Open-Source Components**” means any software component that is subject to any open-source copyright license agreement, including any GNU general public license or GNU library or lesser public license, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“**Product**” means any Fluree Services or Software.

“Software” means any Fluree DB software either downloaded by you, or hosted by us, and any updates or modifications to such software, but excluding open source software components, each of which has its copyright notice and license included in the license file and Documentation.

“Subscription Package” means an enrollment for use of any Product(s), which can be found at <https://www.flur.ee/>.

“Third-Party Materials” means materials and information, in any form or medium, that are not proprietary to Fluree, including any third-party: (a) documents, data, content, consensus processes or specifications; (b) Open-Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

2. Software and Services

We will provide you, either through direct download or through a Fluree hosted account, with the Software and the Services in accordance with the Subscription Package you select. Enterprise Subscription Packages may include additional Services whose terms and conditionals will be memorialized in a separate agreement. Notwithstanding any provision in this Agreement to the contrary, in the event there is a term or condition in a separate Enterprise Subscription Package agreement that conflicts with the terms and conditions of this Agreement, the Enterprise Subscription Package agreement shall control.

3. License

We grant you the non-exclusive, non-sublicensable and non-transferable (except for your Affiliates), limited right to access and use the Services and to install and use the Software included with your Subscription Package. You may use the Software only in accordance with this Agreement. You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. Neither you, your End-Users, or your Affiliates may do any of the following:

- a. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Software;
- b. reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- c. bypass or breach any security device or protection used for or contained in the Software or Documentation;
- d. remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software or Documentation;
- e. use the Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law;
- f. use the Software in or in connection with the design, construction, maintenance, operation or use of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or

- application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or
- g. use (i) the Software or Documentation other than for the permitted use or in any manner or for any purpose or application not expressly permitted by this Agreement or (ii) any Open-Source Components in any manner or for any purpose or application not expressly permitted by the controlling open-source license.

4. Pricing and Payment

Payments are due and must be made in accordance with your Subscription Package.

5. Taxes

Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. You must pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this agreement and which we are permitted to collect from you under applicable law. You will be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the distribution or provision of Products to your Affiliates. We will be responsible for all taxes based on our net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on our property ownership.

If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority; provided, however, that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You must ensure that any taxes withheld are minimized to the extent possible under applicable law.

6. Term and Termination

This Agreement starts on the date that you subscribe to a Subscription Package, or you download our Software for a free trial, and continues until either party terminates this Agreement subject to the terms of this Section 6. Upon termination of this Agreement, you will remove the Software from all Servers. During the term of this Agreement and one year following termination, we may inspect your records relating to your use of the Software or Services for the purposes of verifying compliance with this Agreement.

7. Intellectual Property

Except for the licenses set forth in this Agreement, this Agreement does not transfer any right, title or interest in any Intellectual Property Right of either party to the other. If you choose to provide us with suggestions, ideas for improvement, recommendations or other feedback, we may use your feedback without any restriction or payment.

8. Confidentiality

The receiving party will use the disclosing party's Confidential Information only in connection with this Agreement and protect the disclosing party's Confidential Information by using the

same degree of care used to protect its own confidential information, but not less than a reasonable degree of care. The receiving party will limit disclosure of the disclosing party's Confidential Information to its and its Affiliates' directors, officers, employees and contractors bound to confidentiality obligations at least as protective as the confidentiality provisions in this Agreement and who have a need to know the Confidential Information. The receiving party will not disclose the disclosing party's Confidential Information to any other third party without the consent of the disclosing party. The receiving party may disclose Confidential Information pursuant to a compulsory governmental process, provided that the receiving party, if legally permitted, promptly notifies the disclosing party, so that the disclosing party may seek to make such disclosure subject to a protective order or other appropriate remedy. Each party will return or destroy the other party's Confidential Information upon written request from the other party.

9. Indemnification

- a. Our Indemnification of You** We shall indemnify you from and against any damages incurred by you arising out of or relating to any legal actions by a third party to the extent that such Losses arise from any allegation in such legal action that the Software, or any use of the Software, in accordance with this Agreement (including the Documentation) infringes any U.S. Intellectual Property Right. This obligation does not apply to action or damages associated with any allegation of or relating to any:
- i. Open-Source Components or other Third-Party Materials;
 - ii. patent issued on a patent application published after this Agreement becomes effective;
 - iii. incorporation by the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by us or specified for your use in the Documentation;
 - iv. modification of the Software other than: (i) by us in connection with this Agreement; or (ii) with our express written authorization and in strict accordance with our written directions and specifications;
 - v. Failure by you to timely implement any maintenance release, modification, update or replacement of the Software made available to you by us;
 - vi. use of the Software after we give notice to you of such activities alleged or actual infringement, misappropriation or other violation of a third party's rights;
 - vii. negligence, abuse, misapplication or misuse of the Software or Documentation by or on behalf of you, your representative or a third party;
 - viii. use of the Software or Documentation by or on behalf of you that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to our instructions;
 - ix. events or circumstances outside of our commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions); or
 - x. any action or damages for which you are obligated to indemnify us pursuant to this Agreement.
- b. Your Indemnification of Us** You shall indemnify us and our Affiliates, and each of our respective officers, directors, employees, agents, subcontractors, successors and assigns ("our indemnities") from and against any and all actions and damages incurred by us or our indemnities in connection with any action by

a third party to the extent that such damages arise out of or relate to any allegation that you, the End-Users, or your Affiliates are or will be violating or misappropriating any third-party's Intellectual Property Rights through any:

- i. use or combination of the Software by or on behalf of you or any of your Affiliates or End-Users with any hardware, software, system, network, service or other matter whatsoever that is neither provided by us nor authorized by us in this Agreement and the Documentation; and
- ii. information, materials or technology or other matter whatsoever directly or indirectly provided by you or directed by you to be installed, combined, integrated or used with, as part of, or in connection with the Software or Documentation;
- iii. of or relating to facts that, if true, would constitute a breach by you of any representation, warranty, covenant or obligation under this Agreement;
- iv. of or relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of you, your Affiliates or End-Users with respect to the Software or Documentation or otherwise in connection with this Agreement; or
- v. of or relating to use of the Software or Documentation by or on behalf of you or any of your Affiliates or End-Users that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to our instructions.

c. Indemnification Procedure Each party will provide the other with prompt notice of any claim. A party's failure to provide prompt notice to the other party relieves the party of its obligation to indemnify the other party only to the extent that the failure to provide notice materially prejudiced the party's ability to defend the claim. The indemnifying party will have sole control of the defense of the claim, including any settlement. The indemnified party will provide the indemnifying party with reasonable cooperation in connection with the defense of the claim, and may participate in the defense at its own expense. This Section 9 sets forth each party's exclusive remedy for any third party infringement claim.

d. Sole Remedy THIS SECTION 9 SETS FORTH YOUR SOLE REMEDIES AND OUR SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SOFTWARE AND DOCUMENTATION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Warranties

TO THE FULLEST EXTENT PERMITTED BY LAW, FLUREE AND ITS AFFILIATES, SUPPLIERS AND DISTRIBUTORS MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE SOFTWARE OR SERVICES. THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS." WE ALSO DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

11. Limitation of Liability

WE DON'T EXCLUDE OR LIMIT OUR LIABILITY TO YOU WHERE IT WOULD BE ILLEGAL TO DO SO—THIS INCLUDES ANY LIABILITY FOR FLUREE'S OR ITS AFFILIATES' FRAUD OR FRAUDULENT MISREPRESENTATION IN PROVIDING THE SOFTWARE OR SERVICES. IN COUNTRIES WHERE THE FOLLOWING TYPES OF EXCLUSIONS AREN'T ALLOWED, WE'RE RESPONSIBLE TO YOU ONLY FOR LOSSES AND DAMAGES THAT ARE A REASONABLY FORESEEABLE RESULT OF OUR FAILURE TO USE REASONABLE CARE AND SKILL OR OUR BREACH OF OUR CONTRACT WITH YOU. THIS PARAGRAPH DOESN'T AFFECT CONSUMER RIGHTS THAT CAN'T BE WAIVED OR LIMITED BY ANY CONTRACT OR AGREEMENT.

IN COUNTRIES WHERE EXCLUSIONS OR LIMITATIONS OF LIABILITY ARE ALLOWED, FLUREE, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS WON'T BE LIABLE FOR:

- i. ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR
- ii. ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS, REGARDLESS OF LEGAL THEORY.

THESE EXCLUSIONS OR LIMITATIONS WILL APPLY REGARDLESS OF WHETHER OR NOT FLUREE OR ANY OF ITS AFFILIATES HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES.

IF YOU USE THE SERVICES FOR ANY COMMERCIAL, BUSINESS OR RE-SALE PURPOSE, FLUREE, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS WILL HAVE NO LIABILITY TO YOU FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS OPPORTUNITY DUE TO USE OF THE PRODUCT(S) OR ANY OTHER OPEN-SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS. FLUREE AND ITS AFFILIATES AREN'T RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE SOFTWARE OR SERVICES.

OTHER THAN FOR THE TYPES OF LIABILITY WE CANNOT LIMIT BY LAW (AS DESCRIBED IN THIS SECTION), WE LIMIT OUR LIABILITY TO YOU TO ANY AMOUNT YOU'VE PAID UNDER YOUR CURRENT SUBSCRIPTION PACKAGE WITH FLUREE.

12. Miscellaneous

- a. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- b. **Notices.** You must send notices by mail to the address below.
NOTICES SHOULD BE SENT TO:

Fluree, P.B.C.
486 Patterson Avenue, Suite 261
Winston Salem, NC 27101

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify is accurate and current, and you agree that any email notice that we send to such email address will be effective when sent, whether or not you actually receive the email.

- c. **Surviving Terms.** The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1 (Definitions), Section 7 (Intellectual Property), Section 8 (Confidentiality), Section 9 (Indemnification), Section 10 (Warranties), Section 11 (Limitations of Liability) and Section 12 (Miscellaneous).
- d. **Entire Agreement.** This Agreement constitutes the entire agreement between you and Fluree with respect to the subject matter of this Agreement, and supersede and replace any other prior or contemporaneous agreements, or terms and conditions applicable to the subject matter of this Agreement. This Agreement creates no third party beneficiary rights.
- e. **Waiver, Severability & Assignment.** Fluree's failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable, the remaining provisions of this Agreement will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights under this Agreement, and any such attempt will be void. Fluree may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services.
- f. **Amendment and Modification.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.