

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.

“**Authorization Form**” means a document issued by us and executed or otherwise agreed upon by your authorized representative that specifies, among other things and as applicable, a description of the Services, the Fees, the number of Seats and/or units purchased, and any other details specifically related to the Services.

“**Confidential Information**” means any nonpublic information of a party (the “**Disclosing Party**”), whether disclosed orally or in written or digital media, that is identified as “confidential” or with a similar legend at the time of such disclosure or that the receiving party (the “**Receiving Party**”) knows or should have known is the confidential or proprietary information of the Disclosing Party. The Services, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Fluree.

“**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 now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout 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.

“Professional Services” means professional services provided by Fluree to Customer as described in any Authorization Form (or as further elaborated in any statement of work).

“Services” means any services provided by Fluree to Customer under this Agreement as set forth in an Authorization Form, including, but not limited to, provision of the Software and Professional Services.

“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 Grant; Intellectual Property

Subject to the terms and conditions of this Agreement, Fluree grants to Customer a non-exclusive and non-transferable (except as provided in Section 11.e) license during the Term (as defined below), solely for Customer’s internal business purposes and in accordance with the limitations (if any) set forth in the Authorization Form, to access and use the Services and to install and use Software and in accordance with the Documentation. 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, nor 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;
 - g. access or use Software to build a similar or competitive product or service; or
 - h. 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.

The Software and Documentation, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Fluree and its suppliers. All rights in and to the Software and Documentation not expressly granted to Customer in this Agreement are reserved by Fluree and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Software, Documentation, or any part thereof.

Customer hereby grants to Fluree a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including End-Users, relating to the Services. Fluree will not identify Customer as the source of any such feedback.

Some of the Open-Source Components are owned by third parties. The Open-Source Components are not subject to the terms and conditions of Section 3. Instead, each Open-Source Component is licensed under the terms of the end-user license that accompanies such Open-Source Component. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end-user license for the Open-Source Components.

4. Pricing and Payment

In consideration for the access rights granted to Customer and the Services performed by Fluree under this Agreement, Customer will pay to Fluree the fees associated with its Subscription Package. Fluree reserves the right to modify the Fees payable hereunder upon written notice to Customer at least ninety (90) days prior to the end of the then-current term. Fluree reserves the right (in addition to any other rights or remedies Fluree may have) suspend all Customer's access to the Services if any fees are more than thirty (30) days overdue until such amounts are paid in full. Customer will maintain complete, accurate and up-to-date Customer billing and contact information at all times.

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 will begin on the date Customer subscribes to a Subscription Package or downloads our Software for a free trial, and continue in full force and effect as long as any Authorization Form remains in effect, unless earlier terminated in accordance with the Agreement (the “**Term**”). Unless otherwise stated in the applicable Authorization Form, the term of an Order Form will begin on the effective date of the Authorization Form and continue in full force and effect for one (1) year, unless earlier terminated in accordance with the Agreement. Thereafter, the Authorization Form will automatically renew for additional terms of one (1) year unless either party gives written notice of non-renewal to the other party at least thirty (30) days prior to the expiration of the then-current term.

During the Term and for one (1) year thereafter, we may inspect your records relating to your use of the Software or Services for the purposes of verifying compliance with this Agreement.

Fluree may terminate this Agreement for convenience on thirty (30) days’ prior written notice to the Customer. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

Upon termination or expiration of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) promptly after the effective date of termination or expiration, each party will comply with the obligations to return all Confidential Information of the other party, as set forth in Section 7; (c) any amounts owed to Fluree under this Agreement will become immediately due and payable; and (d) Customer will remove the Software from all Servers.

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 3 (License Grant; Intellectual Property), Section 6 (Term and Termination), Section 7 (Confidentiality), Section 8 (Indemnification), Section 9 (Warranties), Section 10 (Limitations of Liability) and Section 11 (Miscellaneous).

7. Confidentiality

The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to End-Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Fluree). In addition, the Receiving

Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will, upon request, certify to the Disclosing Party its compliance with this sentence.

The confidentiality obligations set forth in this section will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure free of any confidentiality duties or obligations; or (d) the Receiving Party can demonstrate, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

8. 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 8 sets forth each party’s exclusive remedy for any third party infringement claim.
- d. **Sole Remedy.** THIS SECTION 8 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.

9. Disclaimer of Warranties

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SOFTWARE, SERVICES AND DOCUMENTATION ARE PROVIDED “AS IS,” AND FLUREE MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS,

WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. FLUREE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

10. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO FLUREE DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL FLUREE'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY.

The parties agree that the limitations of liability set forth in this section will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

11. 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. **Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of North Carolina, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Forsyth County, North Carolina for any lawsuit filed there against Customer by Fluree arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 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.