

## **LEAPFROGBI MASTER SERVICES AGREEMENT**

Last updated: 2-15-2018

BY ACCEPTING THIS AGREEMENT YOU AGREE TO THE FOLLOWING TERMS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

### **Definitions**

"Account" means the relationship between Your company and Us.

"Agreement" means this LeapFrogBI Master Services Agreement

"Services" means the products or services ordered by You via online registration or other form of request. This may include LeapFrogBI's Business Intelligence as a Service, Data Warehouse Automation Platform, professional services, or any combination of the above.

"User" means a unique individual at Your company.

"We," "Us" or "Our" means LeapFrogBI LLC.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement.

### **Free Trials**

If You register on Our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

### **Fees, Payments and Refunds**

Fees for Services are specified at [www.leapfrogbi.com](http://www.leapfrogbi.com) at the time of registration based on the plan selected, or may be set via written proposal, and commence at the later of (1) registration, (2) immediately upon completion of any applicable free trial period, or (3) upon the agreed upon start date. For professional services rendered you will be billed at the end of each monthly term for the amount of the subscription plus the amount for any additional professional services hours not covered by the plan which will be billed at the effective hourly rate for the selected plan. Such additional hours may be provided at Our discretion, based on availability, upon request. Fees for the initial term of a professional services subscription are prorated based on hours utilized. For all other subscriptions you will be billed at the start of each monthly term for the amount of the subscription.

We may increase rates for Services at Our discretion, but not more than once in any three month period, by providing written notice to You at least 30 days in advance.

Travel expenses are not included in subscription fees and will be billed separately for any travel requested by You related to the delivery of Services. You agree to pay all fees and expense reimbursement within 30 days of receipt of invoice.

All amounts payable under this Agreement are denominated in United States dollars, and You will pay all such amounts in United States dollars.

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, You are responsible for paying all taxes associated with Your purchase of Services.

If this Agreement is terminated by Us in accordance with these terms, You will pay any unpaid fees due and any unpaid fees covering the remainder of the term of all active subscriptions. In no event will termination relieve You of Your obligation to pay any fees payable to Us for a period prior to the effective date of termination.

### **Usage and Restrictions**

You will (a) be responsible for Users' compliance with the applicable terms of this Agreement, (b) be responsible for the accuracy, quality and legality of Your data used in conjunction with Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, and (d) use Services only in accordance with this Agreement and applicable laws and government regulations.

You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) interfere with or disrupt the integrity or performance of any Service, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any, (k) access any Service in order to build a competitive product or service or to benchmark with another product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law). Any use of the Services in breach of this Agreement by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services.

We grant You a limited right to use the Services under this Agreement. You will not have any rights to the Services except as expressly granted in this Agreement. We reserve all rights to the Services not expressly granted to You in accordance with this Agreement. We retain all copyright, patent, and other intellectual property rights in and to the Services.

You grant us permission to use your company name and logo on our website and other promotional materials.

### **Service Level Agreement**

We may be contacted for technical support and service requests from 8:00AM-5:00PM Central Time, Monday through Friday, excluding holidays. We will respond to all requests within one business day from the time it was received.

## **Term and Termination**

This Agreement is effective on the date you first accept it and continues in effect while You have any active subscriptions to the Services.

The term for paid Services subscriptions is one calendar month and automatically renews at the end of each month unless either party gives the other notice of non-renewal at least 1 business day before the end of the relevant subscription term. You may upgrade or downgrade your subscription by contacting support@leapfrogfbi.com any time before the first day of the subscription month. You may also cancel or pause your subscription by contacting support@leapfrogfbi.com any time before the first day of the subscription month.

Either party may terminate this Agreement for cause (i) upon 10 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

This provision and the sections titled "Fees, Payments and Refunds," "Confidentiality," "Disclaimers," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Indemnification," "Limitation of Liability," "Governing Law," "Wavier," and "Severability" will survive any termination or expiration of this Agreement.

## **Confidentiality**

Definition of Confidential Information: For the purpose of this Agreement, "Confidential Information" means non-public information of LeapFrogBI or You disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of Services or other tangible objects, or to which the other party may have access, or any other information which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party or which is of a confidential nature even though not specifically so designated. Confidential Information will not, however, include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party, as shown by the receiving party's files and records; (iv) is obtained by the receiving party from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

The receiving party shall preserve the confidentiality of the disclosing party's Confidential Information and treat such Confidential Information with at least the same degree of care that the receiving party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The receiving party will use the Confidential Information of the disclosing party only to exercise rights and perform obligations under this Agreement. Confidential Information of the disclosing party will be disclosed only to those employees and contractors of the receiving party with a need to know such information. The receiving party shall not be liable to the disclosing party for the release of Confidential Information if such information: (a) was known to the receiving party on or before the effective date of this Agreement without restriction as to use or disclosure; (b) is released into the public domain through no fault of the receiving party; (c) was independently developed solely by the

employees of the receiving party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the receiving party will notify the disclosing party promptly of such required disclosure and reasonably assists the disclosing party in efforts to limit such required disclosure.

## **Representations, Warranties, Exclusive Remedies and Disclaimers**

Each party represents and warrants to the other that: this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

For any breach of a warranty above, Your exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

Disclaimer: EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR OTHERWISE ON ITS BEHALF AND ON BEHALF OF ITS LICENSORS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **Indemnification**

We will defend at Our expense any action against You brought by a third party to the extent that the action is based upon a claim that the Services infringe or misappropriate any copyright or trade secret rights, and We will pay those costs and damages finally awarded against You in any such action that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on You notifying Us promptly in writing of such action, You giving Us sole control of the defense thereof and any related settlement negotiations, and You cooperating and, at Our reasonable request and expense, assisting in such defense. If the Services (or any component thereof) become, or in Our opinion are likely to become, the subject of an infringement claim, We may, at Our option and expense, either (a) procure for You the right to continue exercising the rights licensed to You in this Agreement, or (b) replace or modify the Services so that they become non-infringing and remain functionally equivalent. If neither of the foregoing options are, in Our reasonable opinion, commercially reasonable, We may terminate this Agreement and will refund to You a pro-rata portion of any applicable prepaid fees.

You agree to defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party arising from Your use of the Services in violation of the Agreement or applicable law, or alleging Your data infringes or misappropriates such third party's intellectual property rights, and indemnify Us from any damages, attorney fees and costs finally awarded against Us, or for any amounts paid by Us under a settlement approved by You in writing, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

## **Limitation of Liability**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **Notices**

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon receipt if by email or personal delivery, or the second business day after mailing. Notices to You will be addressed to the relevant contact designated by You as part of online registration.

## **Assignment**

Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent, except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise.

## **Relationship of the Parties**

The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership or a joint venture between the parties. This Agreement controls the actions of all party representatives, officers, agents, employees and associated individuals. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing.

We may utilize a subcontractor or other third party to perform duties under this Agreement so long as We remain responsible for all of our obligations under this Agreement.

## **Governing Law**

This Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies

arising from or relating to this Agreement shall be the state or federal courts located in Travis County, Texas. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law.

### **Waiver**

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

### **Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Your right to use the Services will immediately terminate.

### **Entire Agreement**

This Agreement is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent that anything in or associated with the Website is in conflict or inconsistent with this Agreement, this Agreement shall take precedence.