

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

ONLINE SUBSCRIPTION AGREEMENT

PLEASE READ THIS ONLINE SUBSCRIPTION AGREEMENT BEFORE USING THE CONFLUENT PLATFORM. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE THE CONFLUENT OFFERING OR USE THE CONFLUENT PLATFORM.

This Online Subscription Agreement (“Agreement”) is entered into by and between Confluent, Inc. (“Confluent”) and the Government Ordering Activity purchasing the Confluent Offering and accepting the terms of this Agreement (“Customer”). The effective date of this Agreement (the “Effective Date”) is the date that Customer uses the Confluent Platform.

1. License.

1.1 License Terms.

1.1 Subject to the terms of this Agreement, Confluent grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable license during the Term of this Agreement to install and use Confluent’s proprietary software (“Proprietary Confluent Software”) only on servers owned or controlled by Customer and solely for Customer’s internal business operations. Confluent also makes available to Customer certain open source software as identified at http://www.confluent.io/third_party_software (the “Third Party Software”). To the extent the terms of open source licenses applicable to Third Party Software prohibit any of the restrictions in this Agreement, such restrictions will not apply to such Third Party Software. To the extent the terms of open source licenses applicable to Third Party Software require Confluent to make an offer to provide source code or related information in connection with the Third Party Software, such offer is made. The Proprietary Confluent Software and the Third Party Software shall be referred to collectively as the “Confluent Platform.” The license to the Proprietary Confluent Software together with the Support Services (defined in Section 5.3 below) shall be referred to collectively as the “Confluent Offering.”

1.2 Additional Restrictions on Use. Customer shall not, and shall not permit or encourage any third party to: (a) use the Proprietary Confluent Software for third-party training, software-as-a-service, time-sharing or service bureau use or (b) disassemble, decompile or reverse engineer any portions of the Proprietary Confluent Software that are not provided in source code format, or otherwise attempt to gain access to the source code to such Proprietary Confluent Software (or the underlying ideas, algorithms, structure or organization of the object code in the Proprietary Confluent Software). The foregoing restriction is inapplicable to the extent prohibited by applicable law; provided that, in the event that Customer intends to disassemble, decompile or reverse engineer such Proprietary Confluent Software, Customer shall first provide Confluent with written notice thereof.

1.3 Copies. Section 1.1 includes the right for Customer to make copies of the Proprietary Confluent Software as necessary to exercise the licenses granted in Section 1.1, and a reasonable number of back-up or archival copies, provided that each such copy shall include Confluent's copyright and any other proprietary notices that appear on the original copies of the Proprietary Confluent Software.

1.4 Confluent Audit Rights. Confluent reserves the right, upon prior notice to Customer, to audit usage of the Proprietary Confluent Software at Customer's premises (and at the premises of or via virtual access to Customer's hosting providers) during normal business hours to verify Customer's compliance with the terms of this Agreement and the applicable usage restrictions set forth on the Reseller Order Form. If Confluent determines as a result of such audit that any fees are due from Customer to Confluent under the terms of this Agreement, Carahsoft Technology Corporation (Carahsoft), acting on behalf of Confluent, shall invoice Customer for such amounts due along with interest in an amount equal to one and one-half percent (1.5%) of the underpayment per month, or at the highest interest rate permitted by applicable law, whichever is less, calculated monthly from the date the underpayment was due until the date payment is made; and if such amount exceeds five percent (5%) of the cumulative fees previously paid under the applicable Reseller Order Form, Carahsoft, acting on behalf of Confluent, shall invoice Customer for the reasonable cost of such audit.

1.5 Reservation of Rights. Confluent reserves all rights not expressly granted in this Section. No rights are granted by implication.

1.6 Delivery of Materials. The Confluent Platform, and any versions, updates or maintenance releases of any component thereof, will be delivered only through an electronic transfer. The parties shall reasonably cooperate to effectuate such delivery via FTP or other reasonable means.

2. Payment. Notwithstanding any contrary provision, Customer shall pay Reseller the fees in the amount set forth in the Reseller Order Form (the "Fees") in accordance with the terms set forth therein.

3. Ownership. Customer acknowledges that Confluent or its licensors retain all proprietary rights, title and interest, including all intellectual property rights, in and to the Confluent Platform and any changes, corrections, bug fixes, enhancements, updates and other modifications thereto (collectively, "Modifications") made by or on behalf of Customer, and as between the parties all such rights shall vest in Confluent. Customer acknowledges that the licenses granted in Section 1.1 do not include the right to prepare any Modifications of the Confluent Platform.

4. Confidentiality.

4.1 Nondisclosure. Each party shall retain in confidence the non-public information and know-how disclosed or made available by the other party pursuant to this Agreement which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure or should reasonably be understood to be confidential by the recipient (the "Confidential Information"); provided, however that Modifications will be the Confidential Information of Confluent and not Customer. The Proprietary Confluent Software shall be Confluent's Confidential Information regardless of whether marked as such. Each party agrees to: (a) maintain the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except for the purpose of performing its obligations under this Agreement; and (c) not disclose such Confidential Information to any third party except to employees and subcontractors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding written use and disclosure restrictions at least as protective as those set forth herein). Each party shall immediately notify the other party of any unauthorized disclosure or use of any Confidential Information and assist the other party in remedying

such unauthorized use or disclosure by taking such steps as are reasonably requested by such other party. The foregoing obligations will not apply to Confidential Information of the other party which is: (i) already publicly known without breach of this Agreement; (ii) discovered or created by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law or court order; provided that the receiving party shall provide prompt notice thereof and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives (and only subject to confidentiality obligations at least as protective as those set forth herein and such party will ensure their compliance therewith) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto.

5. Limited Warranty and Support.

5.1 Scope of Limited Warranty. Confluent warrants to Customer that for a period of thirty (30) days after the first delivery of the Proprietary Confluent Software by Confluent to Customer, the Proprietary Confluent Software, in the form delivered by Confluent to Customer, will perform substantially in accordance with the written documentation therefor. This limited warranty shall not apply if the Proprietary Confluent Software has been: (i) altered or modified; (ii) subjected to negligence, computer or electrical malfunction; or (iii) used, adjusted, installed or operated (A) other than in accordance with this Agreement or the instructions furnished by Confluent or (B) with an application or in an environment other than that intended or recommended by Confluent.

5.2 Exclusive Remedy. Confluent's sole liability and Customer's exclusive remedy under the limited warranty set forth above shall be, at Confluent's election, to attempt, through reasonable efforts and where technically feasible, to correct any failure of the Proprietary Confluent Software to conform to its written documentation or to replace the non-conforming software. The above remedy is available only if (a) discovery of the non-conformity occurs during the applicable warranty period, (b) Customer notifies Confluent in writing by Customer of such discovery within the warranty period, and (c)

Confluent's examination of Proprietary Confluent Software discloses that such non-conformity exists.

5.3 Support and Maintenance. Confluent shall provide the support and maintenance services set forth in the maintenance and support terms as specified in the applicable Reseller Order Form ("Support Services").

5.4 Disclaimer of Any Other Warranties. EXCEPT FOR THE EXPRESS, LIMITED WARRANTY PROVIDED IN THIS SECTION, CONFLUENT MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE CONFLUENT PLATFORM OR ANY OTHER MATERIALS OR SUPPORT SERVICES PROVIDED HEREUNDER. CONFLUENT SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE CONFLUENT PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

6. Infringement Indemnification. Confluent shall defend or at its option settle, at its own expense, any third-party claim, demand or lawsuit brought against Customer to the extent alleging facts that, if true would constitute an infringement by the Proprietary Confluent Software of such third party's intellectual property right, and will pay such damages or costs as are finally awarded against Customer attributable to such action, provided that Customer: (a) notifies Confluent promptly in writing of any such action; (b) gives Confluent sole control of the defense or settlement of such action; and (c) gives Confluent all reasonable information and assistance, at Confluent's expense. Should the Proprietary Confluent Software become, or in the opinion of Confluent be likely to become, the subject of such an infringement claim, Confluent may, at its option: (i) procure for Customer the right to use the Proprietary Confluent Software, as applicable, at no charge to Customer; (ii) replace or modify, in whole or in part, the Proprietary Confluent Software, as applicable, to make it non-infringing; or (iii) accept return of the Proprietary Confluent Software, or remove the allegedly offending module thereof, and, refund a pro rata portion of the Fees paid by Customer to Reseller for the then-current

Term. Confluent assumes no liability hereunder for any claim of infringement to the extent based on: (x) use of software other than a current unaltered release of the Confluent Platform, as applicable, as provided by Confluent to Customer; or (y) the combination, operation or use of the Proprietary Confluent Software, with non-Confluent programs or data other than those intended or recommended by Confluent. THIS SECTION SETS FORTH CONFLUENT'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

7. Limitation of Liability. EXCEPT FOR BREACH OF SECTION 1.1 OR 1.2, BREACH OF SECTION 4, AND INDEMNIFICATION OBLIGATIONS:

(A) IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO RESELLER FOR THE APPLICABLE SOFTWARE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY; AND

(B) NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND BY ANY OTHER PARTY, HOWEVER CAUSED AND (TO THE FULLEST EXTENT PERMITTED BY LAW) UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Term and Termination.

8.1 Term. Unless earlier terminated as provided in this Section, this Agreement and the license granted hereunder shall be effective as of the Effective Date and shall continue thereafter for the period specified in the applicable Reseller Order Form (the "Term"),.

8.2 Termination. Either party shall have the right to terminate this Agreement and the license granted herein upon written notice in the event the other party fails to perform or observe any material term or condition of this Agreement and such default has not been cured no later than thirty (30) days after written notice of such default to the other party. Confluent may also terminate this Agreement immediately if the Customer: (a) terminates or suspends its business; (b) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (d) has wound up or liquidated, voluntarily or otherwise.

8.3 Effect of Termination. The rights and obligations of Confluent and Customer in Sections 1.4 (Audits), 1.5 (Reservation of Rights), 3 (Ownership), 4 (Confidentiality), 5.4 (Disclaimer of Any Other Warranties), 6 (Infringement Indemnification), 7 (Limitation of Liability), 8.3 (Effect of Termination) and 9 (Miscellaneous) shall survive termination of this Agreement. No later than five (5) days after termination of this Agreement, Customer shall return to Confluent or, upon Confluent's request, destroy or render inaccessible, at Customer's sole expense, all Confidential Information of Confluent and materials containing any Confidential Information of Confluent, and discontinue use of and uninstall the Proprietary Confluent Software, including all copies thereof. Nothing contained herein shall limit any other remedies that Confluent may have for the default of Customer under this Agreement nor relieve Customer of any of its obligations incurred prior to such termination.

9. Miscellaneous

9.1 Assignment. Customer shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, to any third party without Confluent's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Notwithstanding the foregoing, Customer shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, conditioned upon (a) the parties' mutual written agreement on any additional fees payable as a result of such assignment and (b) the payment of such fees. Confluent shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of

stock, reorganization or otherwise. Subject to this Section, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

9.2 Entire Agreement; Modification; Waiver. This Agreement, together with its exhibits, Reseller Order Forms, and the terms and conditions set forth in Carahsoft's GSA Multiple Award Schedule 70 Contract, represents the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, with respect to the matters covered by this Agreement, and is not intended to confer upon any third party any rights or remedies hereunder. Customer acknowledges that it has not entered in this Agreement based on any representations other than those contained herein. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by Confluent, Carahsoft and the GSA Contracting Officer. If there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Customer purchase order or other document, the conflict shall be resolved in accordance with General Services Administration Acquisition Regulation 552.212-4(s) Order of Precedence. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

9.3 Delays. In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this Section, and if such party shall have used its commercially reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences.

9.4 Governing Law. This Agreement shall in all respects be governed by US Federal law.

9.5 Severability. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect.

9.6 Relationship of the Parties. Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever. 9.7 Notices. All notices permitted or required under this Agreement shall be in writing and shall be deemed to have been given when delivered in person (including by overnight courier), or three (3) business days after being mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in the Reseller Order Form or such other address as either party may specify in writing.

9.8 Export Law Assurances. Customer understands that the Proprietary Confluent Software is subject to export control laws and regulations. CUSTOMER MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE PROPRIETARY CONFLUENT SOFTWARE OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS. NONE OF THE PROPRIETARY CONFLUENT SOFTWARE OR ANY UNDERLYING INFORMATION OR TECHNOLOGY MAY BE DOWNLOADED OR OTHERWISE EXPORTED OR RE-EXPORTED: (a) INTO (OR TO A NATIONAL OR RESIDENT OF) ANY COUNTRY TO WHICH THE UNITED STATES HAS EMBARGOED GOODS; OR (b) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S LIST OF PROHIBITED COUNTRIES OR DEBARRED OR DENIED PERSONS OR ENTITIES. CUSTOMER HEREBY AGREES TO THE FOREGOING AND REPRESENTS AND WARRANTS THAT CUSTOMER IS NOT LOCATED IN, UNDER CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

9.9 Construction. The titles and section headings used in this Agreement are for ease of reference only and shall not be used in the interpretation or construction of this Agreement. No rule of construction resolving any ambiguity in favor of the non-drafting party shall be applied hereto. The word "including", when used herein, is illustrative rather than exclusive and means "including, without limitation."