CONFLUENT CLOUD TERMS OF SERVICE

Updated: October 22, 2020

Your use of the Confluent Cloud Service is governed by these Terms of Service and any applicable Order (together, the "Agreement"). "Confluent" means Confluent, Inc., located at 899 West Evelyn Avenue, Mountain View, CA 94041. "Your", "You" and "Customer" are used interchangeably throughout the Agreement and have the same meaning.

Your use of the Cloud Service is subject to the terms of this Agreement. By accessing or using the Cloud Service, or by clicking on the checkbox that demonstrates acceptance of this Agreement, you are agreeing to the terms of this Agreement. If you are entering into this Agreement on behalf of an entity, then you represent and agree that you have the legal authority to bind that entity to this Agreement. If you do not accept the terms of this Agreement, then you cannot use the Cloud Service.

1.   DEFINITIONS

1.1   "Affiliate" means any entity that controls, is controlled by, or is under common control with a party, where "control" means direct or indirect ownership of more than 50% of the voting interests of the entity.

1.2   "Cloud Service" means the managed service offering(s) that Confluent makes available through its website via the login link at confluent.cloud/login, and that are purchased by Customer.

1.3   "Content" means all data and information transmitted to the Cloud Service by Customer or on Customer's behalf.

1.4   "Documentation" means the published documentation describing the functionality of the Cloud Service, located at https://docs.confluent.io/current/cloud/index.html#cloud-home.

1.5   "Order" means (i) an ordering document for a Cloud Service, Support Services, and/or any professional advisory and training services, agreed upon by the parties and referencing this Agreement, or (ii) the Cloud Service(s) selected and activated by Customer via the Confluent Cloud website, including any selected Support Services.

1.6   "Support Services" means the applicable support and maintenance service that Customer purchases for the Cloud Service, as may be more fully described in the Order and this Agreement.

1.7   "User" means any person that Customer allows access to or use of the Cloud Service, and may include Customer's employees, contractors, service providers, and other third parties that use the Cloud Service in connection with Customer's own business operations.

2.   CONFLUENT CLOUD SERVICE

2.1   Generally. Confluent will make the Cloud Service available to Customer for access and use solely for Customer's own business operations and in accordance with the terms of this Agreement. Customer is responsible for Users' compliance with this Agreement.

2.2   Registration. Customer must register and setup an authorized account to use the Cloud Service. Customer must keep the registration information accurate and complete. Customer is responsible for the security of its User IDs and passwords and for the use of its accounts and will immediately notify Confluent of any unauthorized use at support@confluent.io.

2.3   Usage Data. Confluent may from time to time use and process data about Customer's use of the products and services for the purpose of creating statistics and analytics data. Confluent may use such data for its own internal business purposes, including to maintain and improve its products and services and to monitor and analyse its activities in connection with the performance of such services. In addition, Customer acknowledges that certain features used in connection with the Cloud Service may be configured to collect and report telemetry data to Confluent as more particularly described in *More Information Regarding Confluent Data Collection* located at https://www.confluent.io/moreinformation/. Customer may enable or disable transmission of such telemetry data to Confluent at any time.

3. **ACCEPTABLE USE**

3.1   General Restrictions and Responsibilities. Customer shall not resell, sublicense, rent or lease the Cloud Service, or otherwise make it available to anyone other than its Users. Customer shall not use the Cloud Service to violate the security or integrity of any network, computer or communications system, software application, or network or computing device. Customer shall not make network connections to any users, hosts, or networks unless Customer has permission to communicate with them, and may not use manual or electronic means to avoid any use limitations placed on the Cloud Service, such as access and storage restrictions. Confluent may, but has no obligation to (a) investigate any violation of this provision or misuse of the Cloud Service, or (b) remove any content, or disable access to any resource, that violates the foregoing.

3.2   Content Restrictions and Responsibilities. Customer is solely responsible for (i) the legality of Content, (ii) ensuring compliance with all privacy laws applicable to the collection and provision of Content, (iii) Customer's configuration and use of the Cloud Service, and (iv) taking appropriate action to securely transmit and backup Content, which may include use of encryption to protect Content from unauthorized access. Customer is responsible for communicating with the Cloud Service through encrypted and authenticated connections, as may be required by Confluent, and for transmitting all Content using such security methods. Confluent does not control the retention policy settings in Apache Kafka^{TM}. To the extent that Customer will be subject to user data access and deletion requests, Customer is responsible for configuring the retention period on Kafka topics (i.e., category names to which messages are stored and published) that contain EU personal data to a maximum of 30 days. Customer shall not transmit Content that is illegal, fraudulent, infringing, or in violation of any individual's or entity's privacy rights. As more fully described in the Security Addendum (defined below), Customer shall not transmit (i) PCI DSS-regulated data unless such data is message-level encrypted by Customer, or (ii) protected health information without having entered into a Business Associate Agreement with Confluent.

4. **PRIVACY AND SECURITY.**

Unless a separate data processing agreement has been entered into by the parties, each party shall comply with the Data Processing Addendum located at https://confluent.io/cloud-customer-dpa. Confluent will use commercially reasonable administrative, physical and technical safeguards designed to prevent unauthorized access, use or disclosure of Content, as more fully described in the Confluent Cloud Security Addendum located at https://confluent.io/cloud-enterprise-security-addendum ("Security Addendum"). Confluent will not access any Content except as necessary to provide the Cloud Service or Support Services, to enforce the provisions of this Agreement, or for a Permitted Disclosure (as defined in section 8.1). Customer acknowledges

that the content of the Security Addendum is subject to technical progress and development and that Confluent may update or modify the Security Addendum from time to time; provided, however, that such updates and modifications will not result in the degradation of the overall security of the Cloud Service purchased by Customer.

5. CONFLUENT SOFTWARE

5.1 License. In connection with Customer's use of the Cloud Service, Confluent may provide to Customer certain of its proprietary software ("Confluent Software") as may be stated in an applicable Order. Subject to the terms of this Agreement and such Order, Confluent grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as otherwise provided herein) license during the specified license term to install and use such Confluent Software solely for Customer's internal business operations and solely in connection with Customer's use of the Cloud Service. Customer may permit its third-party service providers to install and use the Confluent Software to provide outsourced services to Customer, and Customer will be solely responsible for such service provider's compliance with this Agreement.

5.2 Additional Restrictions on Use. Customer shall not, and shall not permit or encourage any third party to: (a) use the 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 Confluent Software that are not provided in source code format, or otherwise attempt to gain access to the source code to such Confluent Software (or the underlying ideas, algorithms, structure or organization of the object code in the Confluent Software). The foregoing restriction is inapplicable to the extent prohibited by applicable law.

6. ORDERS, FEES AND RELATED

6.1 Orders Generally. All Orders are subject to the terms of this Agreement and are not binding until accepted by Confluent. Orders created by Customer through the Confluent Cloud website are deemed accepted when Confluent provides access to the service environment selected by Customer. All Orders are non-refundable except as expressly provided in this Agreement.

6.2 Direct Orders. Sections 6.3 to 6.6 only apply to Orders placed directly with Confluent. If Customer purchases any Cloud Service through a Confluent-authorized reseller, Customer will pay the reseller for such purchase and different terms may apply.

6.3 Fees and Payment. Customer agrees to pay Confluent all fees incurred for its usage of the Cloud Service and any additional fees specified in an Order. Unless agreed otherwise in a written Order between the parties, Customer's use of the Cloud Service is subject to the fee schedule specified in the Confluent Cloud user interface, and usage fees will be calculated and billed monthly. All amounts payable to Confluent under this Agreement will be due within thirty (30) days from the date of invoice.

6.4 Taxes. Customer will pay all applicable customs, duties, sales, use, value added, withholding, or other taxes, federal, state or otherwise, however designated, which are levied or imposed because of the transactions contemplated by this Agreement, excluding only taxes based on Confluent's net income. If Customer is compelled to make a deduction or set-off for any such taxes, Customer will pay Confluent such additional amounts as necessary to ensure receipt by Confluent of the full amount Confluent would have received but for the deduction.

6.5 Credit Card Processing. For online Orders that require payment by credit card, Confluent uses a third-party credit card processing service to process payments. Customer consents to the use of such service and to

the transfer of Customer's credit card details to such third-party processor. Customer agrees to be bound by any separate terms applicable to the processing service. Customer's credit card will be charged fees automatically for Customer's use of the Cloud Service at the end of each billing cycle.

6.6　　Late Payments. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Upon notice to Customer, Confluent may suspend Customer's access to the Cloud Service or Support Services for failure to pay any amounts owed when due.

7.　INTELLECTUAL PROPERTY OWNERSHIP

7.1　　Confluent Materials. Confluent or its licensors retain all rights, title and interest, in and to all intellectual property rights in the Cloud Service, Confluent Software, including all related and underlying technology and documentation; and any derivative works, changes, corrections, bug fixes, enhancements, updates, modifications, or improvements of any of the foregoing ("Modifications"), (collectively, "Confluent Materials"). Except for the express limited rights set forth under this Agreement, no right, title or interest in any Confluent Materials is granted to Customer. Customer acknowledges that the licenses granted in this Agreement do not include the right to prepare any Modifications of the Confluent Materials. Confluent reserves all rights not expressly granted in this Agreement. No rights are granted by implication.

7.2　　Content. Except for the limited rights granted under this Agreement, as between Customer and Confluent, Customer retains all rights, title and interest, including all intellectual property rights, in the Content. Content does not include data that Confluent collects as specified in section 2.3 (Usage Data).

7.3　　Feedback. Customer has no obligation to provide Confluent any suggestions, enhancement requests, recommendations, or other feedback regarding Confluent's products and services ("Feedback"). However, Confluent may use and include any Feedback that Customer provides in Confluent's products and services without restriction or payment.

8.　CONFIDENTIALITY

8.1　　Confidentiality Obligations. 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 ("Confidential Information"). Notwithstanding any failure to so designate it, the Confluent Software is Confluent's Confidential Information, and Content is Customer's Confidential Information. Each party shall (a) maintain the confidentiality of the other party's Confidential Information using at least a reasonable degree of care; (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 Confidential Information to any party except to its and its Affiliate's employees, subcontractors and agents as is reasonably required in connection with this Agreement and who are subject to confidentiality obligations at least as protective as those set forth in this section. 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 (i) is or becomes publicly known without breach of this Agreement; (ii) is 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; or (iii) is otherwise known to the receiving party without confidentiality restrictions and

through no wrongful conduct of the receiving party. Receiving party may disclose Confidential Information to the extent required by law or court order if the receiving party provides prompt notice and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure ("Permitted Disclosures").

8.2.   Injunctive Relief. Any breach or threatened breach of this section may cause irreparable harm to the disclosing party for which there is no adequate remedy at law. Therefore, the disclosing party will be entitled to seek injunctive relief without the necessity of proving actual damages or posting a bond, in addition to any other remedies available at law.

9.   WARRANTIES AND DISCLAIMERS

9.1   Warranties. Confluent represents and warrants that (i) it shall perform Support Services in a professional manner, employing a standard of care, skill and diligence consistent with industry standards, , and (ii) the Cloud Service will perform in all material respects in accordance with the applicable Documentation. Confluent's entire obligation and Customer's sole remedy for a breach of the foregoing warranty will be for Confluent to re-perform the Support Services in accordance with the requirements stated in the Support Services or correct any non-conformity in the Cloud Service, as applicable.

9.2   Warranty Disclaimer. EXCEPT FOR THE WARRANTIES STATED IN THIS SECTION, CONFLUENT MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE CLOUD SERVICE, CONFLUENT SOFTWARE, SUPPORT SERVICES OR ANY OTHER CONFLUENT MATERIALS OR 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, AND NONINFRINGEMENT. CONFLUENT DOES NOT WARRANT THAT THE CLOUD SERVICE OR CONFLUENT SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED. FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS DISCLAIMER DIMINISHES ANY OBLIGATIONS EXPRESSLY STATED IN THE SERVICE LEVEL AGREEMENT REFERENCED IN THIS AGREEMENT OR AN ORDER HEREUNDER.

10. INDEMNIFICATION

10.1   By Confluent. Confluent will defend Customer from and against any claim, demand, or lawsuit brought against Customer by a third party alleging that the Cloud Service and any Confluent Software licensed under an Order (together, the "Confluent Technology"), as made available to Customer by Confluent and used pursuant to this Agreement, infringes such third party's intellectual property rights, and Confluent will pay such damages or costs as are finally awarded against Customer or agreed to in settlement attributable to any such action, provided that Customer gives Confluent (a) prompt notification in writing of any such action; (b) sole control of the defense or settlement of such action (provided any settlement releases Customer from all liability); and (c) all reasonable information and assistance, at Confluent's expense. If the Confluent Technology becomes, or in the opinion of Confluent is likely to become, the subject of such an infringement claim, Confluent shall, at its option and expense, either: (i) procure for Customer the right to use the allegedly infringing element of the Confluent Technology, at no charge to Customer; (ii) replace or modify, in whole or in part, the Confluent Technology to make it non-infringing; or (iii) if neither (i) or (ii) are commercially available, terminate the applicable Order, and refund a pro rata portion of any fees pre-paid by Customer for the terminated Cloud Service. Confluent assumes no liability hereunder for any claim of infringement if such claim is based on: (a) Content, (b) use of software other than a current unaltered release of the Confluent Software, as provided by Confluent to Customer; (c) the combination, operation or use of the Confluent Technology, with non-Confluent programs or hardware, if the claim would not have arisen but for such combination, operation

or use; (d) any alteration or modification of the Confluent Software by a party other than Confluent, (e) the public open source versions of Apache Kafka or any other Third Party Software, or (f) use of the Confluent Technology other than in accordance with this Agreement. 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.

10.2 By Customer. Customer will defend Confluent from and against any claim, demand, or lawsuit brought against Confluent by a third party arising out of or relating to any Content, including any claim involving alleged infringement or misappropriation of third-party rights by the Content, and Customer will pay such damages or costs as are finally awarded against Confluent attributable to any such action, provided that Confluent gives Customer (i) prompt notification in writing of any such action; (ii) sole control of the defense or settlement of such action (provided any settlement releases Confluent from all liability); and (iii) all reasonable information and assistance, at Customer's expense.

11. LIMITATION OF LIABILITY

11.1 NOTHING IN THIS AGREEMENT LIMITS EITHER PARTY'S (I) LIABILITY FOR PERSONAL INJURY, DEATH OR WILLFUL MISCONDUCT, (II) LIABILITY THAT CANNOT BE LIMITED BY APPLICABLE LAW, OR (III) OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION).

11.2 EXCEPT AS SET FORTH IN SECTION 11.1,

(A) NEITHER PARTY (NOR ITS SUPPLIERS) WILL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, OR FOR LOSS OF BUSINESS, PROFITS, ANTICIPATED SAVINGS, OR DATA, OR FOR ANY CLAIM OR DEMAND BY ANY OTHER PARTY, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

(B) IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES OR LIABILITY OF ANY TYPE EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO CONFLUENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

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

12. TERM AND TERMINATION

12.1 Term. This Agreement commences on the Effective Date and will remain in effect until the termination or expiration of all Orders governed by this Agreement, unless earlier terminated as provided below.

12.2 Termination. Unless otherwise stated in an applicable Order, Customer may discontinue its use of the Cloud Service at any time for any reason by following the process in the Confluent website interface to "Delete" Customer's purchased Cloud Service. Either party may terminate this Agreement or an Order upon written notice in the event the other party materially breaches this Agreement and such breach is not cured within thirty days after written notice of such breach. The termination of an Order will not automatically result in the termination of this Agreement. Either party may also terminate this Agreement immediately if the other party (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.

12.3 Effect of Termination. The provisions of this Agreement that by their nature extend beyond the termination of this Agreement will survive termination. Upon termination of this Agreement or expiration of an Order, Customer will immediately cease use of and access to the Cloud Service and the Support Services, and delete all copies of the Confluent Software and related documentation. Customer is solely responsible for exporting Content from the Cloud Service prior to expiration or termination of this Agreement. Customer acknowledges that following termination it will have no further access to any Content.

13.   SUPPORT SERVICES. Confluent will provide Support Services for the Cloud Service, as provided in Confluent's applicable support policy and in accordance with the level of Support Services purchased. If Customer does not purchase a different level of Support Services, Confluent will provide a "basic" or "free" level of Support Services.

14.   SERVICE LEVEL AGREEMENT. Confluent will provide an uptime service level agreement as set forth at https://www.confluent.io/confluent-cloud-uptime-sla.

15.   PROOF OF CONCEPT. A **"**Proof of Concept" is a short-term evaluation of the Cloud Service, pursuant to an Order that is specifically labeled "Proof of Concept." If Customer orders a Proof of Concept, the terms of this section 15 govern that use and control over any conflicting provision of this Agreement; provided however that the Proof of Concept Order will include all applicable provisions of this Agreement that are not in conflict with the provisions of this section 15. Unless specifically stated in an Order, Customer may use the Proof of Concept only for (a) internal testing and evaluation purposes on a development or non-production cluster, and (b) the period stated in the Order. If the Order does not state a term, the term for the Proof of Concept will be for 30 days beginning on the date Customer is provided access to the Cloud Service. Customer will not have access to any data or Content after the Proof of Concept term ends. Unless specifically stated in an Order, Confluent will provide the Proof of Concept: (a) without support; (b) "AS IS"; (c) without indemnification, warranty, or condition of any kind; and (d) no service level commitment will apply to the Proof of Concept. Unless an Order states otherwise, Customer must not transmit production data or data regulated by law or regulation into the Cloud Service during the Proof of Concept term. Certain features or functionality of the Cloud Service may not be available in a Proof of Concept. Providing any Proof of Concept, or any feature or functionality in a Proof of Concept, does not constitute a Confluent commitment to offer it or the Proof of Concept on a generally available basis.

16.   GENERAL

16.1 Assignment. Neither party may 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 the other party's prior written consent, except to an Affiliate or 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. Any purported transfer, assignment or delegation without such prior written consent will be void. Subject to this section, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and permitted assigns.

16.2 Third Party Software. In addition to the Confluent Software, Confluent also makes available certain third party open source software as identified in the applicable help, notices, about or source files ("Third Party Software"). The Third Party Software shall be subject to the applicable open source license(s) and not this Agreement, and is provided by Confluent at no charge. Confluent makes no warranties, express or implied, with respect to any 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.

16.3 Delays. In the event that either party 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, acts or intervention of governmental authority, or any other cause beyond the reasonable control of the party invoking this section, and if such party 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.

16.4   Governing Law. This Agreement is governed by the laws of the State of California without regard to its conflicts of laws principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of and venue in the federal and state courts within Santa Clara County, California. The parties consent to the personal and exclusive jurisdiction and venue of these courts. The parties disclaim and exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

16.5   Export Compliance. Confluent Materials are subject to export control laws and regulations. Customer may not access or use the Confluent Materials or any underlying information or technology except in full compliance with all applicable United States export control laws. Neither the Confluent Technology nor any underlying information or technology may be accessed or used (a) by any individual or entity in any country to which the United States has embargoed goods; or (b) by 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.

16.6 Government End-Users. If Confluent Software is being licensed by the U.S. Government, the Confluent Software is deemed to be "commercial computer software" and "commercial computer documentation" developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject solely to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

16.7   Other. This Agreement, together with its exhibits, addendums and any incorporated terms, represents the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, with respect to its subject matter, and is not intended to confer upon any third party any rights or remedies. Customer acknowledges that it has not relied on any representations other than those contained in this Agreement. 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 both parties. Confluent may use Customer's trade names, service marks and logos in marketing materials and customer lists for advertising or publicizing Customer's use of the Cloud Service. The terms of this Agreement will supersede any additional or conflicting term in any purchase order or other purchasing-related document issued by Customer and relating to an Order. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it will be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Nothing in this Agreement will be construed as creating an agency, partnership, or joint venture relationship between the parties. Neither party shall have any right or authority to assume or create any

obligations or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect. Notices will be in writing and deemed given when delivered in person (including by overnight courier), or three business days after being mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Each party represents and warrants that the individual binding a party under this Agreement and any Order is authorized to do so.