

Typesafe

27 South Park, Suite 101, San Francisco, CA 94107

typesafe.com

**Carahsoft Rider to Manufacturer End User License Agreements  
(for U.S. Government End Users)**

1. **Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) 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 EULA 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 EULA are inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's 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 GSA contracts as set forth in GSA ORDER 4800.2G ADM, 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 GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which 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 Agreement: (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 Agreement. 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 Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement 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 will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA 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 (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA 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 Manufacturer EULA 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 Manufacturer EULA 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 FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (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 EULA, 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 EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.



## MASTER SUBSCRIPTION AGREEMENT

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PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU AGREE TO THESE TERMS. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD NOT AGREE TO THE TERMS OF THIS AGREEMENT OR INSTALL OR USE THE SOFTWARE.

This Master Subscription Agreement ("Agreement") is made by and between Typesafe, Inc. ("Typesafe") with its principal place of business at 27 South Park Avenue, Suite 101, San Francisco, California 94107 and the person or entity entering into this Agreement ("Customer"). The effective date ("Effective Date") of this Agreement is the date Customer agrees to these terms or installs or uses the Software (as defined below).

### 1. Software Subscription License Grants.

**1.1 Developer Subscription.** Subject to the terms and conditions of this Agreement, during the time Customer has purchased a Developer Subscription, Typesafe grants to Customer a limited, non-exclusive, non-transferable license to install and use the Software on a per named developer basis for the number of developers specified on the applicable Order Form solely for development purposes and in no event may Customer use the Software for production or any other commercial purposes.

**1.2 Gold and Platinum Subscription.** Subject to the terms and conditions of this Agreement, during the time Customer has purchased a Gold or Platinum Subscription, Typesafe grants to Customer a limited, non-exclusive, non-transferable license to install and use the Software on the number of Servers specified on the applicable Order Form solely in connection with Customer's business operations. All of Customer's Servers on which the Software is installed or used must be covered by a Software Subscription.

**1.3. Termination or Expiration of Software Subscription.** Upon termination or expiration of the Software Subscription, Customer's license to the Software granted under this Agreement shall terminate.

**1.4 License Restrictions.** Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

**1.4.1** sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any Software or the Documentation to a third party; or

**1.4.2** decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Software, in whole or in part, nor shall Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Software or encourage others to do so, except to the limited extent, if any, that applicable law

permits such acts notwithstanding any contractual prohibitions, provided, however, before Customer exercises any rights that Customer believes to be entitled to based on mandatory law, Customer shall provide Typesafe with thirty (30) days prior written notice and provide all reasonably requested information to allow Typesafe to assess Customer's claim and, at Typesafe's sole discretion, to provide alternatives that reduce any adverse impact on Typesafe's intellectual property or other rights; or

**1.4.3** allow access or permit use of the Software by any users other than Customer's employees or authorized third-party contractors who are providing services to Customer and agree in writing to abide by the terms of this Agreement, provided further that Customer shall be liable for any failure by such employees and third-party contractors to comply with the terms of this Agreement and no usage restrictions shall be exceeded; or

**1.4.4** create, develop, license, install, use, or deploy any third party software or services to circumvent or provide access, permissions or rights which violate the license keys embedded within the Software; or

**1.4.5** modify or create derivative works based upon the Software or Documentation; or

**1.4.6** disclose the results of any benchmark test of the Software to any third party without Typesafe's prior written approval; or

**1.4.7** change any proprietary rights notices which appear in the Software or Documentation; or

**1.4.8** use the Software as part of a software as a service where Customer receives payment for such software as a service or in any other resale capacity.

**1.5 Copies.** Customer may make up to two copies of the Software for backup and/or archival purposes.

**1.6 Open Source Software.** The Software may include individual open source software components, each of which

has its own copyright and its own applicable license conditions. The open source software is licensed to Customer under the terms of the applicable open source license conditions and/or copyright notices that can be found in the licenses file, the Documentation or other materials accompanying the Software.

**2 Support Services.** Typesafe shall provide Support Services for the Software as described in Exhibit A at the level selected by Customer (e.g., Developer, Gold or Platinum). Support Services are provided to Customer solely for Customer's internal use and Customer may not use the Software or Support Services to supply any services or support to any third party.

**3 Reserved.**

**4 Confidentiality.** For a period of five (5) years from the date of disclosure of the applicable Confidential Information, Customer shall (i) hold the Confidential Information in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, and (ii) not use the Confidential Information for any purpose whatsoever except as expressly contemplated under this Agreement; provided that, to the extent the Confidential Information constitutes a trade secret under law, Customer agrees to protect such information for so long as it qualifies as a trade secret under applicable law. Customer shall disclose the Confidential Information only to those of its employees and contractors having a need to know such Confidential Information and shall take all reasonable precautions to ensure that such employees and contractors comply with the provisions of this Section. The obligations of Customer under this Section shall not apply to information that Customer can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality, (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by Customer, (iii) has been received from a third party without restriction on disclosure and without breach of agreement by Customer, or (iv) is independently developed by Customer without regard to the Confidential Information. In addition, Customer may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it; provided that Customer gives Typesafe reasonable written notice to allow Typesafe to seek a protective order or other appropriate remedy, discloses only such Confidential Information as is required by the governmental entity, and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed. Notwithstanding the above, Customer agrees that Typesafe, its employees and agents shall be free to use and employ their

general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any Subscriptions and Support Services for the Software performed under this Agreement.

**5 Ownership.**

**5.1 Ownership of Software.** Typesafe and its licensors shall retain all intellectual property and proprietary rights in the Software, Documentation, and related works, including but not limited to any derivative work of the foregoing.

**5.2 Customer's Materials.** Customer grants to Typesafe a nonexclusive, non-transferable, royalty-free license to use materials provided by Customer to Typesafe during the Term of this Agreement solely for the purpose of performing the Support Services for the Software for Customer.

**6 Warranties, Disclaimer and Limitation of Liability.**

**6.1 Warranties.**

**6.1.1 Software.** Typesafe warrants to Customer only that, for a period of thirty (30) days following the date the Software is initially licensed by Customer ("Warranty Period"), the Software shall substantially conform to the description contained in the applicable Documentation. If during the Warranty Period the Software does not substantially conform to the description contained in the applicable Documentation, Typesafe shall perform the Support Services described in Exhibit A.

**6.1.2 Support Services.** Typesafe warrants to Customer only that, the Support Services shall be performed in a workmanlike manner and shall conform to standards of the industry. If the Support Services are not performed as set forth above, Typesafe shall re-perform the applicable Support Services.

**6.1.3** The remedies in Section 6.1.1 and 6.1.2 are Customer's sole and exclusive remedies for breach of warranty and Typesafe's sole and exclusive liability for breach of warranty.

**6.1.4** The warranties in Sections 6.1.1 and 6.1.2 are made to and for the benefit of Customer only. The warranties shall apply only if: (i) the Software has been properly installed and used at all times and in accordance with the instructions in the applicable Documentation; (ii) no modification, alteration or addition has been made to the Software; and (iii) Typesafe receives written notification of the breach, in the case of the warranty in Section 6.1.1, within thirty (30) days following the date the Software were initially licensed by Customer, and in the case of the warranty in Section 6.1.2, within three (3) days following the performance of the relevant Support Services.

**6.2 Disclaimer.** EXCEPT FOR THE WARRANTIES IN SECTION 6.1, THE SOFTWARE, SUPPORT SERVICES AND

DOCUMENTATION ARE PROVIDED "AS-IS" AND TYPESAFE AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, NON-INFRINGEMENT, TITLE, PERFORMANCE, AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE SOFTWARE, SUPPORT SERVICES AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, OR DIRECT LIFE SUPPORT SYSTEMS.

**6.3 Limitation of Liability.** IN NO EVENT WILL TYPESAFE OR ITS SUPPLIERS BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, RELIANCE, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED. IN NO EVENT WILL TYPESAFE'S CUMULATIVE LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT EXCEED TWENTY THOUSAND DOLLARS (US\$20,000). IN NO EVENT WILL TYPESAFE'S SUPPLIERS HAVE ANY LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 6.3 ALLOCATE RISKS UNDER THIS AGREEMENT BETWEEN CUSTOMER, TYPESAFE AND TYPESAFE'S SUPPLIERS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **7 Indemnification.**

**7.1 Indemnity.** Subject to the remainder of Section 7 and while Customer has a valid Software Subscription in place, Typesafe shall defend Customer against any third party claim brought against Customer that the Software licensed under this Agreement infringe such third party's U.S. patent or copyright ("Infringement Claim"), and indemnify Customer from the resulting costs and damages awarded against Customer to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in settlement; provided that Customer: (i) notifies Typesafe promptly in writing of such Infringement Claim, (ii) grants Typesafe sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a Typesafe request for assistance. Typesafe will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own

discretion, and Customer may not settle or compromise such Infringement Claim, except with prior written consent of Typesafe.

**7.2 Options.** Should any Software become, or in Typesafe's opinion be likely to become, the subject of such an Infringement Claim, Typesafe shall, at its option and expense, (a) procure for Customer the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or (c) request return of the Software and, upon receipt thereof, the corresponding licenses are terminated and Typesafe shall refund the prepaid but unused annual Software Subscription Fees paid for the infringing Software.

**7.3 Exclusions.** Typesafe shall have no liability if the alleged infringement is based on (1) combination with non-Typesafe products, data or business processes, (2) use for a purpose or in a manner for which the Software was not designed, (3) use of any older release of the Software when use of a newer Typesafe revision would have avoided the infringement, (4) any modification or alteration of the Software, (5) any intellectual property right owned or licensed by Customer, excluding the Software, (6) Typesafe's compliance with any materials, designs, specifications or instructions provided by Customer, (7) Customer running the Software after Typesafe notifies Customer to discontinue running due to such a claim, or (8) open source software.

**7.4 Limitation.** THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND TYPESAFE'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

## **8 Term and Termination.**

**8.1** This Agreement shall commence on the Effective Date and continue until terminated as set forth in this Agreement ("Term"). Either party may terminate this Agreement in the event that the other party breaches this Agreement and does not cure such breach within thirty (30) days of written notice. Each Software Subscription shall begin on the date Customer purchases the Software Subscription by entering into an applicable Order Form and shall continue during the time Customer has paid the initial Subscription Fees ("Initial Term"), unless terminated earlier in accordance with this Section 8.1. Software Subscriptions shall automatically renew for additional terms of one (1) year each (each a "Renewal Term") unless either party gives the other party written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current term. The applicable license granted in Section 1 of this Agreement automatically terminates upon the termination of the underlying Software Subscription. Expiration or termination of this Agreement for any reason shall not relieve the parties of any obligation accruing prior to expiration or termination.

**8.2** Sections 4, 5, 6.2, 6.3, 8, 9 and 10 shall survive the expiration or termination of this Agreement.

**8.3** During the Term and for one (1) year following termination or expiration (but no more than once in a calendar year), Typesafe and its auditors may inspect Customer's records relating to its reproduction and use of the Software for the purposes of verifying Customer's compliance with this Agreement. Customer shall cooperate fully with Typesafe and its auditors in conducting audits and provide reasonable assistance. If an underpayment is discovered, Customer shall promptly pay such amount and Customer shall reimburse Typesafe for the cost of the audit.

## **9 General.**

**9.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. Purchase orders shall be for the sole purpose of defining quantities, prices and describing the Software and Support Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties.

**9.2 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

**9.3 Waiver.** No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.

**9.4 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (excluding payment of monies due).

**9.5 No Third Party Beneficiaries.** Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Typesafe and Customer and do not create any right in favor of any third party.

**9.6 Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, without reference to the principles of conflicts of law. The provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties shall attempt to resolve any dispute related to this Agreement informally, initially through their respective management, and then by non-binding mediation in San Francisco County, California. Any litigation related to this Agreement shall be brought in the state or federal courts located in San Francisco

County, California, and only in those courts and each party irrevocably waives any objections to such venue.

**9.7 Notices.** All notices must be in writing and shall be effective three (3) days after the date sent to the other party's headquarters, Attention Legal Department.

## **10 Definitions.**

"Confidential Information" means any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by Typesafe to Customer in connection with the transactions contemplated under this Agreement, including (i) all trade secrets, (ii) existing or contemplated Software, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any related information, and (iii) information relating to business plans, sales or marketing methods and customer lists or requirements.

"Documentation" means the documentation made available electronically as part of the Software, which may be modified during the Term.

"Error" means a failure in the Software to materially conform in all material respects to the specifications as described in the applicable Documentation.

"Order Form" means the order form entered into by the parties.

"Maintenance Fix" means generally available code corrections and patches for the Software designated by Typesafe by means of a change in the digit to the right of the Minor Release number (e.g. x.x.1, x.x.2).

"Major Release" means a generally available release of the Software designated by Typesafe by means of a change in the digit to the left of the first decimal point (e.g. 2.x, 3.x, 4.x).

"Minor Release" means a generally available release of the Software designated by Typesafe by means of a change in the digit to the right of the first decimal point (e.g. x.4, x.5, x.6).

"Server" has the meaning given on the applicable Order Form.

"Software" means the Typesafe Stack software licensed by Customer from Typesafe under this Agreement.

"Software Subscription" means a term license purchased by Customer for the Software and Support Services for the Software.

"Support Services" mean the support provided to Customer as part of the Software Subscription as described in Exhibit A.

"Upgrade" means a Major Release, Minor Release, or Maintenance Fix of the Software.

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**Exhibit A**  
**Support Services Terms**

1. **Support Services.** Typesafe's Support Services for the Software covers technical support, Error corrections and Upgrades. All Support Services shall be provided in the English language only. Customer shall designate support personnel who are knowledgeable about the Software to be responsible for reporting Errors and receiving and distributing Error corrections. Typesafe's Support Team representatives shall record all Error reports and coordinate responses. Customer may submit Error reports electronically. Customer may also request electronic status reports on reported Errors online or via e-mail.
  2. **Support Level.** The scope of Support Services provided under this Agreement is subject to: (a) the support level selected by the Subscriber in the applicable Order Form; and (b) the Support Policies displayed on the Typesafe website for the applicable support level, as updated by Typesafe from time to time. Subscriber acknowledges that: (a) while Typesafe cannot guarantee support results, Typesafe agrees to use its good faith, commercially reasonable efforts to provide support in accordance with the support standards set forth in this Agreement and the Support Policies; and (b) Typesafe reserves the right to discontinue support of versions of the Software with a minimum of twenty-four (24) months' notice given to Customer before a version is no longer supported.
  3. **Issue Severity.** All support issues are assigned a severity level:
    - 3.1 **Severity 1:** An error in the Software which severely affects the overall production performance of the Software's function or process, such that a production system is non-functional and no procedural work-around exists.
    - 3.2 **Severity 2:** An error in the Software which materially affects the overall production performance of the Software's function or process so that the function or process is noticeably impaired, but where business operations continue.
    - 3.3 **Severity 3:** An error that does not materially affect the overall performance of a production function or process. This may include a minor issue with limited loss or no loss of functionality or impact to Customer's operations.
    - 3.4 **Development:** A general usage question, developer 'how to' questions, report of a Documentation error, or recommendation for a future product improvement.
  4. **Response Times.** Typesafe and Customer shall cooperate in efforts to resolve reported Errors. For all reproducible reported Errors, Typesafe shall assign a tracking or ticket number, shall work to determine the source of the Errors and shall use commercially reasonable efforts to provide a fix, by-pass or work-around. Typesafe may request that the Customer duplicate the Error, instruct Typesafe how to duplicate the Error or provide problem log dumps, diagnostic tests or other investigative support. Customer shall provide all reasonably requested information to assist in arriving at a problem solution. In cases where Typesafe determines in its sole discretion that an Error in the standard Software has been identified by Customer, Typesafe shall attempt to provide a temporary resolution, and where appropriate, provide a permanent fix to the standard Software within a commercially reasonable timeframe. Typesafe shall use commercially reasonable efforts to meet the following initial response targets:
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	Gold Support	Platinum Support	Developer Support
Hours of Coverage:	Business hours (8:00 AM – 6:00 PM Monday through Friday), excluding Typesafe holidays	24 hours by 7 days (24 x 7)	Business hours (8:00 AM – 6:00 PM Monday through Friday), excluding Typesafe holidays
Support Channel:	Web, email and phone	Web, email and phone	Web and email
Target Response Times (Initial Response):			1 business day
Severity 1	4 business hours	1 hour	N/A
Severity 2	1 business day	4 business hours	N/A
Severity 3	2 business days	1 business day	N/A
Development	1 business day	1 business day	N/A

Typesafe may determine based on the information provided by Customer or through its own investigation that identified Errors were caused by non-Typesafe hardware, software, customizations, or from unauthorized modifications to Software (“Customer Error”). In the event of a Customer Error, Typesafe shall either, at its sole discretion, close the ticket without fixing the Customer Error or ask the Customer if it would like Typesafe to attempt to fix the Customer Error. If Customer and Typesafe agree that Typesafe shall attempt to fix a Customer Error (though Typesafe is under no obligation to do so), Typesafe shall bill Customer for such efforts on a time and materials basis, even if Typesafe is unable to fix the Customer Error. All Error correction services shall be provided from Typesafe’s offices unless Typesafe and Customer mutually agree that Typesafe shall travel to the Customer location. If Typesafe personnel travel to a Customer or customer location to assist in Error correction, Typesafe shall charge Customer reasonable travel and living expenses, and, if the Error is a Customer Error, Typesafe’s standard time and materials charges.

5. **Upgrades.** From time to time, Typesafe may provide Upgrades of its Software. Upgrades may incorporate third party upgrades as well as accumulated bug fixes. A list of supported third party software and associated upgrades are listed in the Documentation. There shall be no additional charge for Upgrades provided Customer is current in the applicable Software Subscription Fees. The Customer shall implement provided Upgrades as soon as is reasonably practical. Upgrades do not include new Software. New Software provide significant new features and functions not available in the current Software line, port existing Software to new hardware or software platforms, provide significant new functionality on new hardware or software platforms. Hot fixes are provided to address critical failure and may not receive the full QA and regression testing performed on regular maintenance releases due to the urgent nature of the situation. Typesafe shall provide Customer with electronic download access to or physical media containing Error corrections and Upgrades, in its sole discretion.
6. **Support Services Prerequisites.** Typesafe shall have no obligation to provide Support Services if Customer is not in compliance with the terms of this Agreement. To be eligible for Support Services, the hardware and operating system on which the Software are installed must meet Typesafe’s minimum configuration requirements, which, for a given Minor Release of a Software, shall be published in that Software Minor Release’s Documentation.
7. **Support Services Exclusions.** Unless otherwise agreed to in an applicable Order Form, no Support Services can be provided for (i) Software that is modified by Customer personnel or by third parties; (ii) problems caused by accident, neglect,

misuse or improper programming by Customer personnel; (iii) failure or fluctuations in electrical power or hardware equipment; or (iv) failure of Customer to fulfill its obligations under any of its agreements with Typesafe.

Support Services do not include or cover support that becomes necessary due to:

- A malfunction of equipment or media not supplied or maintained by Typesafe;
  - Extensions to the Software involving custom or client-specific code (whether created by Typesafe or Customer);
  - Project management and training;
  - A failure of hardware, equipment or programs not covered by this Agreement;
  - Use of software not obtained from Typesafe under this Agreement;
  - Use of any release of the Software not marked as "Generally Available", except for Developer Support and agreed to by Typesafe in an applicable Order Form;
  - Any cause or causes beyond the reasonable control of Typesafe (e.g. floods, fires, loss of electricity or other utilities), Errors arising from anything other than the Software, such as databases, web-servers or hardware;
  - Customer's failure to comply with operating instructions contained in the Documentation;
  - Any modification, enhancement or customization of the Software made by anyone other than Typesafe;
  - APIs, interfaces, web services or data formats other than those included with the Software; or
  - Any third-party Software except to the extent that they are provided by Typesafe, and then only in support of the specific interface or functionality that is intended by Typesafe.
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