



TERMS AND CONDITIONS FOR ADVISORY ENGAGEMENTS

("Agreement")

This Agreement shall apply to any advisory services ("Advisory Services") purchased by Customer under an order form referencing this Agreement (each an "Order Form"). Customer shall pay to Confluent the fees for the Advisory Services set forth in the applicable Order Form(s) ("Services Fees").

1. **Confidential Information and Intellectual Property Rights.**

(a) **Intellectual Property Rights.** Except for the license granted to Customer in the following sentence, Customer acknowledges and agrees that Confluent or its licensors own and shall retain all rights, title and interest, including but not limited to all patent, copyright, trade secret, know-how, design rights, trademark, and other intellectual property rights, in and to any and all materials provided to Customer in the course of the Advisory Services (the "Advisory Materials"). Subject to the payment of the Services Fees, Confluent grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as expressly stated otherwise in the Agreement) license to use the Advisory Materials solely in connection with Customer's use of Apache Kafka and, if Customer has licensed the Confluent Software, the Confluent Software. Notwithstanding anything to the contrary herein, Confluent and its personnel shall be free to use and employ its and 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 performing Services hereunder.

(b) **Confidentiality.** Each party shall retain in confidence the non-public information disclosed or made available by the other party pursuant to this Agreement that 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"). Notwithstanding any failure to so designate them, the terms and conditions of this Agreement and the Advisory Materials shall be Confluent's Confidential Information. Each party agrees to: (i) preserve and protect the confidentiality of the other party's Confidential Information; (ii) refrain from using the other party's Confidential Information except as contemplated herein; and (iii) 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 use and disclosure restrictions at least as protective as those set forth herein). Each party agrees to immediately notify the other party of any unauthorized disclosure or use of any Confidential Information and to assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party that is: (w) already publicly known without breach of this Agreement; (x) 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; (y) otherwise known to the receiving party without restriction on disclosure through no wrongful conduct of the receiving party, or (z) 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) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto.

(c) **Equitable Relief.** Each party agrees and acknowledges that any breach or threatened breach of Section 1(b) may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law.

2. **Independent Contractor.** Confluent and Customer agree that in rendering all Advisory Services hereunder, Confluent and any person employed by Confluent to perform the Advisory Services shall act (and be considered for all purposes) as an independent contractor of Customer, and not as an employee or agent of Customer. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

3. **Warranties and Disclaimer.** Each party warrants it has the right and power to enter into this Agreement, that an authorized representative has executed this Agreement, and that each will comply with any applicable laws and regulations pertaining to this Agreement. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 3, CONFLUENT MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE ADVISORY SERVICES OR ANY OTHER ACCOMPANYING MATERIAL PROVIDED HEREUNDER. CONFLUENT SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS 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 ADVISORY SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

4. **Limitation of Liability.** EXCEPT FOR BREACH OF SECTION 1(b), IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CONFLUENT FOR THE RELEVANT ADVISORY SERVICES UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. EXCEPT FOR BREACH OF SECTION 1(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, 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. CUSTOMER ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5. **Term and Termination.**

(a) This Agreement shall commence on the effective date of the applicable Order Form(s) for the Advisory Services and shall continue until Confluent completes all Advisory Services provided thereunder unless earlier terminated in accordance with the terms hereof. Without prejudice to any other rights, if either party materially defaults in the performance of this Agreement, then the other party may give written notice to the defaulting party of such material default. If the noticed default is not cured within thirty (30) days (or five (5) days in the case of non-payment) following receipt of default notice by the defaulting party, then the non-breaching party shall have the immediate right to terminate this Agreement.

(b) The rights and obligations of Confluent and Customer in Sections 3 (disclaimers only), 4, 5, 6 and 7 shall survive termination of this Agreement. Upon termination or expiration of this Agreement for any reason, all Services Fees for Advisory Services rendered prior to the effective date of such termination or expiration shall become immediately due and payable. 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.

6. **Applicable Law.** This Agreement shall in all respects be governed by the laws of the State of California without reference to its principles of conflicts of laws. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within Santa Clara County, California. Customer hereby consents to the personal and exclusive jurisdiction and venue of these courts. Any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the terms below. Either party may commence mediation by providing JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following forty-five (45) days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement, except that either party may institute an action in court for injunctive or other equitable relief at any time. The arbitration shall be administered by JAMS in Santa Clara County, California pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction.

8. **Miscellaneous.**

(a) 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 (i) the parties' mutual written agreement on any additional fees payable as a result of such assignment and (ii) 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 8(a), this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

(b) This Agreement, together with all Order Forms, 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 both parties. 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 terms and conditions of this Agreement shall prevail. 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.

(c) All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

(d) If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of the Agreement will remain in full force and effect. In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than any payment obligation) 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.

(e) 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 this Agreement or such other address as either party may specify in writing.

(f) The representations, warranties, covenants and agreements set forth in this Agreement are for the sole benefit of the parties hereto and their successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.