



625 Market Street, Suite 1000, San Francisco, CA 94105

## SUBSCRIPTION AGREEMENT

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PLEASE READ THIS SUBSCRIPTION AGREEMENT BEFORE PURCHASING OR USING THE SOFTWARE, DOCUMENTATION OR SUPPORT SERVICES. BY USING OR PURCHASING THE SOFTWARE, DOCUMENTATION OR SUPPORT SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. 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 CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE SOFTWARE, DOCUMENTATION OR SUPPORT SERVICES.

This Subscription Agreement ("Agreement") is 3/22/2017 by and between Lightbend, Inc., a Delaware corporation ("Lightbend") with its principal place of business at 625 Market Street, 10<sup>th</sup> Floor, San Francisco, CA 94105 and the customer identified on an Order Form ("Customer"), and is effective as of the date Lightbend signs the Order Form (the "Effective Date").

**1 License and Access Grants.** There are two (2) types of licenses or access grants covered in this Agreement: (a) free Development Use and Evaluation Licenses described in Section 1.1; and (b) term licenses or access grants described in Section 1.2 provided as part of paid Subscriptions. The terms for Subscriptions shall only apply once Customer has purchased the applicable Subscription from Lightbend.

**1.1 Development Use and Evaluation License Grant.** Subject to the terms and conditions of this Agreement, Lightbend grants to Customer, during the Term of this Agreement, a limited, non-exclusive, non-transferable right and license, to use the Software solely for evaluation and development purposes and in no event may Customer use the Software for production or any other commercial purposes under this Section 1.1.

**1.2 Subscription License or Access Grant.**

**1.2.1 Subscription License Grant.** Subject to the terms and conditions of this Agreement, during the time Subscription Customer has purchased an On- Premises Subscription, as detailed in an applicable Order Form, Lightbend grants to Subscription Customer a limited, non-exclusive, non-transferable license to install and use the Software solely in connection with Subscription Customer's business operations.

**1.2.2 Subscription Access Grant.** Subject to the terms and conditions of this Agreement, during the time Subscription Customer has purchased a Hosted Subscription, as detailed in an applicable Order Form, Lightbend grants to Subscription Customer a limited, non-exclusive, non-transferable right to access and use the Software hosted by Lightbend in a Software as a Service model for Customer's internal business operations.

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

**1.3 License Restrictions.** Unless otherwise provided in an applicable Order Form, Customer shall not itself, or through any parent, subsidiary, Affiliate, agent or other third party:

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

**1.3.2** 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 Lightbend with thirty (30) days prior written notice and provide all reasonably requested information to allow Lightbend to assess Customer's claim and, at Lightbend's sole discretion, to provide alternatives that reduce any adverse impact on Lightbend's intellectual property or other rights; or

**1.3.3** allow access or permit use of the Software by any users other than: (a) 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 for On-Premises Subscriptions only, 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 (b) End Users for Hosted Subscriptions only; provided that Customer shall ensure that it and its End Users comply with the Terms of Service which is incorporated herein by reference; or

**1.3.4** with respect to On-Premises Subscriptions only, 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

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

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

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

**1.3.8** 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 other than with respect to the use of Customer products; provided that such Customer products may in no event provide a service competitive to the product and service offerings of Lightbend.

**1.4 Copies.** Subscription Customers with an On-Premises Subscription only may make up to two copies of the Software for backup and/or archival purposes.

**1.5 Open Source Software.** The Software and Upgrades may include individual open source software components, each of which has its own copyright and its own applicable license conditions. These open source software components are licensed 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 and Upgrades.

**2 Support Services.** Lightbend shall provide Support Services for the Software as described in Exhibit A to Subscription Customers and Support Customers. Support Services are available at Developer, Business Hour and 24x7 levels. Support Services are provided to Subscription Customer or Support Customer solely for its internal use and such Customer may not use the Software or Support Services to provide websites for third parties.

**3 Fees and Payment.** Customer agrees to pay Lightbend the fees ("Fees") as stated on the applicable Order Form. In addition, Customer shall pay all sales, use, value added, withholding, excise taxes and other tax, duty, custom and similar fees levied upon the delivery or use of the Subscriptions described in this Agreement. Fees shall be invoiced in full upon the effective date of the applicable Order Form. Unless otherwise provided on the applicable Order Form, all invoices shall be paid in US dollars and are due upon receipt and shall be paid within thirty (30) days. Payments are non-refundable and shall be made without right of set-off or chargeback. If Customer does not pay the invoices when due, Lightbend may charge interest at one percent (1%) per month on the unpaid balance. If Customer fails to pay Fees in accordance with this Section, Lightbend may suspend fulfilling its obligations under this Agreement until such payment is received by Lightbend. If any applicable law requires Customer to withhold amounts from any payments to Lightbend under this Agreement, (a) Customer shall effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Lightbend with tax receipts evidencing the payments of such amounts and (b) the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, Lightbend receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Lightbend would have received and retained absent the required deduction or withholding.

**4 Confidentiality.** Receiving Party shall (a) 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 (b) not use the Confidential Information for any purpose whatsoever except as expressly contemplated under this Agreement. Receiving Party shall disclose the Confidential Information only to those of its employees and contractors having a need to know such Confidential Information and shall be responsible for all violations of this Section 4 by such employees and contractors. Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it; provided that Receiving Party, if legally permissible, gives Disclosing Party reasonable written notice to allow Disclosing Party 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 Lightbend, 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 or Support Services performed under this Agreement.

## **5 Ownership.**

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

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

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

### **6.1 Warranties.**

**6.1.1 Software.** Lightbend warrants to Subscription Customers only that, for a period of thirty (30) days following the date the Software is initially licensed by Subscription Customer with respect to On-Premises Subscriptions or the date that the Software may first be accessed by Customer with respect to Hosted Subscriptions ("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, Lightbend shall perform the Support Services described in Exhibit A.

**6.1.2 Support Services.** Lightbend warrants to Subscription Customers and Support Customers 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, Lightbend 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 Lightbend'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: (a) the Software has been properly installed or accessed and used at all times and in accordance with the instructions in the applicable Documentation; (b) no modification, alteration or addition has been made to the Software, as applicable; (c) Customer is the type of Customer specified in Sections 6.1.1 and 6.1.2 above, as applicable; and (d) Lightbend receives written notification of the breach, in the case of the warranty in Section 6.1.1, within the Warranty Period, 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 LIGHTBEND 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: (A) IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS NUCLEAR OR CHEMICAL FACILITIES, AIRCRAFT OR OTHER MODES OF HUMAN MASS TRANSPORTATION, LIFE SUPPORT SYSTEMS, IMPLANTABLE MEDICAL EQUIPMENT, MOTOR VEHICLES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH THEIR FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, OR (B) WITH ANY INFORMATION, DATA OR TECHNOLOGY GOVERNED BY THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.

**6.3 Limitation of Liability.** IN NO EVENT WILL LIGHTBEND 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 LIGHTBEND'S CUMULATIVE LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID TO LIGHTBEND BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM. IN NO EVENT WILL LIGHTBEND'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, LIGHTBEND AND LIGHTBEND'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 this Section 7, Lightbend shall defend Subscription Customer against any third party claim brought against Subscription Customer that the Software licensed under this Agreement as part of a Subscription infringes such third party's U.S. patent or copyright ("Infringement Claim"), and indemnify Subscription Customer from the resulting costs and damages awarded against Subscription Customer to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in settlement; provided that Subscription Customer: (a) notifies Lightbend promptly in writing of such Infringement Claim, (b) grants Lightbend sole control over the defense and settlement thereof, and (c) reasonably cooperates in response to a Lightbend request for assistance. Lightbend will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and Subscription Customer may not settle or compromise such Infringement Claim, except with prior written consent of Lightbend.

**7.2 Options.** Should any Software licensed under this Agreement as part of a Subscription become, or in Lightbend's opinion be likely to become, the subject of such an Infringement Claim, Lightbend shall, at its option and expense, (a) procure for Subscription 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 Lightbend shall refund the prepaid but unused annual Subscription fees paid for the infringing Software.

**7.3 Exclusions.** Lightbend shall have no liability if the alleged infringement is based on (a) combination with non-Lightbend products, data or business processes, (b) use for a purpose or in a manner for which the Software was not designed, (c) use of any older release of the Software when use of a newer Lightbend revision would have avoided the infringement, (d) any modification or alteration of the Software, (e) any intellectual property right owned or licensed by Subscription Customer, excluding the Software, (f) Lightbend's compliance with any materials, designs, specifications or instructions provided by Subscription Customer, (g) Subscription Customer using the Software after Lightbend notifies Subscription Customer to discontinue using due to such a claim, or (h) open source software.

**7.4 Limitation.** THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LIGHTBEND'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. For Customers that are not Subscription Customers or Support Customers, Lightbend may terminate this Agreement upon thirty (30) days' notice to Customer. Each Subscription or provision of Support Services shall begin on the date Customer purchases such Subscription or Support Services by entering into an applicable Order Form and shall continue during the time such Customer has paid the applicable initial fees, unless terminated earlier in accordance with this Section 8.1. Subscriptions and Support Services may be renewed upon mutual written agreement of the parties. The applicable license granted in Section 1 of this Agreement automatically terminates upon the termination of the underlying Subscription or this Agreement. 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 1.3, 4, 5, 6.2, 6.3, 7, 8.2, 8.3, 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), Lightbend and its auditors may inspect the records of Customer relating to its reproduction and use of the Software for the purposes of verifying its compliance with this Agreement. Customer shall cooperate fully with Lightbend and its auditors in conducting audits and provide reasonable assistance. If an underpayment is discovered, Customer shall promptly pay such amount and reimburse Lightbend for the cost of the audit. This Section 8.3 only applies to Customers receiving a license to the Software under Section 1 as set forth in the applicable Order Form.

## **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/or 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 Lightbend 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. 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.

**9.8 Government Regulation.** Customer acknowledges that the Software is subject to export restrictions by the U.S. government and import restrictions by certain foreign governments. Customer may not export or re-export the Software except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for: (a) terrorist activity, or (b) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. Customer shall at all times comply with all applicable laws and regulations in its performance under this Agreement, including without limitation any applicable anti-corruption laws.

**9.9 Use by the United States Government.** The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

## **10 Definitions.**

"Affiliate" means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this provision, control means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

"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 the Disclosing Party to the Receiving Party in connection with the transactions contemplated under this Agreement, including (a) all trade secrets, (b) existing or contemplated software, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any related information, and (c) information relating to business plans, sales or marketing methods and customer lists or requirements. Confidential Information does not include information that the Receiving Party 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 Receiving Party, (iii) has been received from a third party without restriction on disclosure and without breach of agreement by Receiving Party, or (iv) is independently developed by Receiving Party without regard to the Confidential Information.

"Disclosing Party" means the party disclosing Confidential Information.

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

"End User" means any individual or entity that directly or indirectly through another user uses the Software under Customer's account pursuant to a Hosted Subscription.

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

"Hosted Subscription" means the right to access and use the Software during a specified term under Section 1.1.2 and Support Services for the Software.

"Maintenance Fix" means generally available code corrections and patches for the Software designated by Lightbend 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 Lightbend 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 Lightbend by means of a change in the digit to the right of the first decimal point (e.g. x.4, x.5, x.6).

"On-Premises Subscription" means a term license for the Software under Section 1.2.1 and Support Services for the Software.

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

"Receiving Party" means the party receiving Confidential Information.

"Software" means the object code version of the Lightbend Platform software set forth on an applicable Order Form.

"Subscription" means an On-Premises Subscription or a Hosted Subscription.

"Subscription Customer" means a Customer who purchases a Subscription.

"Support Customer" means a Customer who purchases Support Services for the Software with no license or access right for the Software under Section 1.2 above.

"Support Services" mean the support for the Software as described in Exhibit A.

"Terms of Service" means the Enterprise Terms of Service set forth at <http://downloads.lightbend.com/website/legal/Lightbend-Enterprise-Terms-of-Service.pdf>.

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

## Exhibit A Support Services Terms

- 1. Support Services.** Lightbend'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. Lightbend's Support Team representatives shall record all Error reports, assign a tracking number, and coordinate responses. Customer may submit Error reports electronically. Customer may also request electronic status reports on reported Errors online or via e-mail. Lightbend and Customer shall cooperate to resolve reported Errors. Lightbend may request that the Customer reproduce the Error, instruct Lightbend how to reproduce the Error and/or provide 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 Lightbend determines in its sole discretion that a reproducible Error in the standard Software has been identified by Customer, Lightbend shall use commercially reasonable efforts to provide a temporary resolution, and where appropriate, provide a permanent fix to the standard Software within a commercially reasonable timeframe.
- 2. Support Level.** The scope of Support Services provided under this Agreement is subject to: (a) the subscription level selected by Customer; and (b) the Support Policies displayed on the Lightbend support portal for the applicable support level, as updated by Lightbend from time to time. Customer acknowledges that: (i) while Lightbend cannot guarantee support results, Lightbend 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 (ii) with respect to On-Premises Subscriptions only, Lightbend reserves the right to discontinue support of versions of the Software after the version has been available for a minimum of twenty-four (24) months and with a minimum of twelve (12) 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 that 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 that 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 development time question or an Error in the Software or Documentation that impacts Customer's application development. This may include general usage questions, developer 'how to' questions, or recommendations for a future product improvement.
- 4. Response Times.** Lightbend shall use commercially reasonable efforts to meet the following initial response targets:

<b>Support Services Level:</b>	<b>Developer Support Services for all Support Services levels (non-production Errors only)</b>	<b>Business Hour Support Services (production Errors only)</b>	<b>24x7 Support Services (production Errors only)</b>
<b>Hours of Coverage:</b>	Business Hours	Business Hours	24 hours by 7 days (24 x 7)
<b>Support Channel:</b>	Web and email	Web, email and phone	Web, email and phone
<b>Target Response Times (Initial Response):</b>			
<b>Severity 1</b>	N/A	4 Business Hours	1 hour
<b>Severity 2</b>	N/A	1 Business Day	4 Business Hours
<b>Severity 3</b>	N/A	2 Business Days	1 Business Day
<b>Development</b>	1 Business Day	N/A	N/A

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

- 5. Business Days and Business Hours.** The Support Services provided under this Agreement are subject to the time zone selected by Customer in the applicable Order Form. The Business Days are Monday through Friday except Lightbend holidays. Business Hours are 8am to 6pm within the time zone selected by Customer in the applicable Order Form during the Business Days defined by the selected time zone. Daylight savings time changes apply within each center’s time zone. The available time zones and associated holidays are:
- a. Australia  
Time zone: Australian Eastern Time  
Holidays: New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen’s Birthday, Labour Day, Christmas Day, Boxing Day.
  - b. Central Europe  
Time zone: Central European Time  
Holidays: New Year’s Day, St Berchtold, Good Friday, Easter Monday, Ascension, Whit Monday, Swiss National Day, Federal Fast holiday, Christmas Day.
  - c. US East  
Time zone: Eastern Time  
Holidays: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day.



- d. US Pacific  
Time zone: Pacific Time  
Holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day.

**6. Upgrades.**

**6.1 On-Premises Subscriptions.** From time to time, Lightbend 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 Fees as set forth on the applicable Order Form. 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 or 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. Lightbend shall provide Customer with electronic download access to or physical media containing Error corrections and Upgrades, in its sole discretion.

**6.2 Hosted Subscriptions.** Lightbend shall automatically update the Software as it sees fit in its sole discretion without any prior notification to Customer.

**7. Support Services Prerequisites.** Lightbend shall have no obligation to provide Support Services if Customer is not in compliance with the terms of this Agreement.

**8. Support Services Exclusions.** Unless otherwise agreed to in an applicable Order Form, no Support Services can be provided for (a) Software that is modified by Customer personnel or by third parties; (b) problems caused by accident, neglect, misuse or improper programming by Customer personnel; (c) failure or fluctuations in electrical power or hardware equipment; or (d) failure of Customer to fulfill its obligations under any of its agreements with Lightbend.

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

- A malfunction of equipment or media not supplied or maintained by Lightbend;
- Extensions to the Software involving custom or client-specific code (whether created by Lightbend or Customer);
- Use of software not obtained from Lightbend under this Agreement;
- Use of any pre-release of the Software such as "Beta" or "Milestone" releases, except for Developer Support and agreed to by Lightbend in an applicable Order Form;
- Customer's failure to comply with operating instructions contained in the Documentation; or
- APIs, interfaces, web services or data formats other than those included with the Software.