



## FLOW CORPORATION PURCHASE SCHEDULE

20 Jay Street  
Suite 622  
Brooklyn, NY 11201  
<http://flowthings.io>

### Carahsoft Rider to Manufacturer Agreements (for U.S. Government End Users)

- 1. Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement 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 Agreement's 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 Government contracts as set forth in Government 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 200 0) (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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) Contractor Indemnities.** All Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement 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.



## FLOW CORPORATION AGREEMENT

20 Jay Street  
Suite 622  
Brooklyn, NY 11201  
<http://flowthings.io>

This Agreement (together with the Purchase Schedule and any other attachments hereto, if applicable, collectively referred to as the “**Agreement**”), effective as of December 15<sup>th</sup>, 2014 (the “**Effective Date**”) is by and between Flow Corporation, a Delaware corporation, having its principal place of business at 20 Jay Street, Brooklyn, NY 11201 (“**Flow**”) and “**Customer**” (as defined below) each, a “**Party**” and together, the “**Parties**”.

**WHEREAS**, Flow is the developer and owner of a proprietary software platform and SaaS solution through which content may be aggregated and subsequently distributed to various websites, devices and platforms.

**WHEREAS**, Customer wishes to make use Flow’s proprietary platform and/or SaaS solution.

**NOW, THEREFORE**, in consideration of the promises set forth herein, the Parties hereto agree, as of the Effective Date (as defined below), as follows:

### 1. Definitions.

1.1 “**Flow Service**” shall mean the services and functionality made available to Customer on or through the Flow platform, Flow API and/or SaaS application

1.2 “**Customer**” means the entity identified as “Customer” on the Agreement Purchase Schedule attached hereto.

1.3 “**Purchase Schedule**” defines scope of Flow products licensed including associated pricing terms and is attached to this Agreement.

1.4 “**Effective Date**” has the meaning set forth above.

1.5 “**Intellectual Property Rights**” means patents, copyrights, trademarks, service marks, or trade secret rights.

1.6 “**Flow APIs**” means the Flow platform Application Programming Interfaces, including sample code, sample applications, and related documentation.

1.7 “**Flow Technology**” means Flow’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available by Flow through use of the Flow Service hereunder.

1.8 “**Flow Platform**” means all services available via Flow APIs.

1.9 “**Service**” means the Flow Service.

1.10 “**User**” means Customer and/or any of their end-users.

1.11 “**User Content**” means any content or work of authorship submitted by Customer or their end-users that is transmitted, rendered, displayed or executed on or through the Service, including without limitation any text, postings, audio, sounds, video, photos, images, messages, code and materials.

1.12 “**User Data**” shall mean personally identifiable registration data, transaction history data, and demographic data collected through the Service.

## **2. Licenses Use of Service.**

Flow hereby grants Customer a worldwide, royalty-free, non-exclusive, non-sublicenseable and non-transferable license and right to use the Flow Service at its discretion, with no obligation to use such Service, and to make the Flow Service available to its Users, under the terms of this Agreement. All rights not expressly granted to Customer pursuant to this Agreement are reserved by Flow and its licensors.

Implementation of the Service may be performed only in accordance with the terms and conditions of this Agreement and such other specifications as may be communicated by Flow to Customer in writing from time to time. Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way, except as expressly authorized in this Agreement; (ii) modify (except as permitted through the Flow Service) or make derivative works of the Service; or (iii) reverse engineer or access the Service in order to build a competitive product or service.

Customer's right hereunder to use the Flow Services shall extend to Customer's contractors acting on behalf of and in accordance with the terms of this Agreement, provided that Customer requires such contractors to be bound by the terms and conditions contained in this Agreement. Customer shall be solely responsible for the acts and omissions of all such contractors, including without limitation, all use of the services by such contractors. If Customer or Customer's contractors use the Flow Services, such contractors shall comply with and be bound by the requirements and any additional terms and conditions set forth in **Exhibit A**.

## **3. Responsibilities.**

### **3.1 Customer Responsibilities.**

Customer is solely responsible for all activity occurring through Customer's use of the Service, including the activity of Users. Customer represents that Customer shall abide by all applicable local, state, national and foreign laws, treaties and regulations, including those related to data privacy, international communications and the transmission of technical or personal data.

### **3.2 Flow Responsibilities.**

Flow shall provide the Service to Customer as set forth herein and support the Service in accordance with the terms of the Service Level Agreement ("**SLA**") set forth in **Exhibit B**.

## **4. User Content and User Data.**

**4.1 User Content.** As between Customer and Flow, all User Content shall be owned by and the exclusive property of Customer. Subject to the terms and conditions of this Agreement, Customer hereby grants Flow, during the Term, a worldwide, royalty free, non-exclusive, non-sublicenseable and non-transferable license to: (i) reproduce, store, display, distribute and perform User Content on or through the Service **solely to provide the Service to Customer**; and (ii) use User Content internally in furtherance of Flow's internal business purposes. Customer acknowledges and agrees that Customer has sole responsibility for ensuring that all User Content is compliant with the terms and conditions of this Agreement and all applicable laws and regulations. Customer, not Flow, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all User Content. The responsibilities of Flow under this Agreement do not include review, editing or remediation of User Content.

**4.2 User Data.** As between Customer and Flow, all right, title and interest in and to all User Data shall be owned by and the exclusive property of Customer. Subject to the terms and conditions of this Agreement, Customer hereby grants Flow, during the Term, a worldwide, royalty free, non-exclusive, non-sublicenseable and non-transferable license to: (i) reproduce, store, display, distribute and perform User Data on or through the Service **solely to provide the Service to Customer**; and (ii) use and analyze the User Data **on an aggregated basis only** in furtherance of Flow's internal business purposes. Flow shall not disclose the User Data to any third party or sell or otherwise monetize the User Data in any manner for any purpose whatsoever without Customer's express, prior written consent. Flow shall comply with all legal requirements applicable to its collection, storage, maintenance, processing, transfer, disclosure or any other use of User Data. Flow shall take all steps reasonably necessary to ensure that all User Data is protected against unauthorized disclosure, access, use, modification, or loss or other misuse.

## **5. Flow Intellectual Property.**

**5.1 Flow Intellectual Property.** Flow and its licensors, partners, or affiliates, where applicable, shall own all right, title and interest, including all related Intellectual Property Rights in and to the Flow Technology and the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Flow Technology or the Intellectual Property Rights owned by Flow. The Flow name, the Flow logo, and the product names associated with the Service are trademarks of Flow, and no right or license is granted to use them.

**5.2 Feedback.** Unless otherwise agreed by the Parties in specific instances, Customer hereby assigns and agrees to assign to Flow all right, title, and interest in and to any enhancement requests, recommendations, suggestions, comments, evaluations, ideas, or other information relating to the Service (the "**Feedback**") provided by Customer to Flow, including, but not limited to, all Intellectual Property Rights embodied in such Feedback.

**Publicity.** Flow may identify Company as a customer and use the Company logo provided by Company to Flow on Flow's website and in Flow's promotional and marketing materials during the Term in a manner no more prominently than the logos of Flow's other customers. Any press release mentioning this relationship requires approval on specific copy from both Parties.

## **6. Fees.**

Customer's use of the Service under this Agreement shall be subject to the fee structure and related terms and conditions set forth on the Agreement Purchase Schedule under the headings "LICENSED AND SUPPORT SUBSCRIPTION FEES" and "NON\_SUBSCRIPTION PRODUCT AND SERVICES FEES. CUSTOMER shall pay all invoices issued by Flow under this Agreement in U.S. dollars within thirty (30) business days of the date of the invoice unless otherwise stated in a Purchase Schedule. All payments are non-refundable. In consideration of the Software licenses and Support Service obligations granted to CUSTOMER, one-time and first year Subscription Fee shall be invoiced on the Purchase Schedule Effective Date. Renewal Subscription Periods shall be invoiced thirty (30) days, but no less than applicable payment terms, before the end of the then-current Subscription Term. Pricing on the Purchase Schedule does not include any taxes that may apply, which in all cases shall be the responsibility of Customer. Notwithstanding the foregoing, Flow shall invoice Customer for Customer's usage of the Flow Service from the Effective Date up to and including the last date of signature within ten (10) days after the last date of signature of this Agreement.

## **7. Confidentiality.**

**7.1 Confidential Information.** "Confidential Information" means, subject to the exceptions set forth in Section 7.3 hereof, any information or data, regardless of whether it is in tangible form, disclosed by either Party (the "**Disclosing Party**") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to

the other Party (the “**Receiving Party**”) or which would be apparent to a reasonable person, familiar with Disclosing Party’s business and the industry in which each operates, to be of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party; provided, however, that information related to or regarding Flow’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services shall be deemed Confidential Information of Flow even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 7.3 hereof, and User Data shall, without exception, be deemed the Confidential Information of Customer.

**7.2 Use and Disclosure of Confidential Information.** The Receiving Party acknowledges that it will have access to the Disclosing Party’s Confidential Information. The Receiving Party agrees that it will not: (i) use any such Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to (a) its employees and consultants who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement and (b) investors, prospective acquirers and professional advisers; provided that such employees and consultants investors, prospective acquirers and professional advisers are bound by written agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 7. The Receiving Party agrees that it will not allow any unauthorized person access to disclosing party’s Confidential Information, and that receiving party will take all action reasonably necessary to protect the confidentiality of such Confidential Information, including implementing and enforcing procedures to minimize the possibility of unauthorized use or copying of such Confidential Information. In the event that the Receiving Party is required by law to make any disclosure of any of Disclosing Party’s Confidential Information, by subpoena, judicial or administrative order or otherwise, the Receiving Party shall first give written notice of such requirement to the Disclosing Party, and shall permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Disclosing Party in seeking to obtain such protection.

**7.3 Exceptions.** Information will not be deemed Confidential Information hereunder if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party as can be demonstrated by documentary evidence.

**7.4 Terms of the Agreement.** In addition, neither Party will disclose the terms of this Agreement to any other party without the prior written consent of the other Party, except that either Party may disclose the terms of this Agreement to its accountants, advisors, investors, acquirers and/or potential investors or acquirers and their advisors (collectively, “Representatives”) of such Party, which Representatives have a “need-to-know” solely for the purpose of evaluating, negotiating or documenting a contemplated investment or acquisition; provided, however, that each such Representative is bound by a written agreement (or in the case of attorneys or other professional advisors, formal ethical duties) requiring such Representative to treat, hold and maintain the terms of this Agreement as Confidential Information in accordance with the terms and conditions of this Section 7.

## **8. Term and Termination.**

**8.1 Term.** This Agreement shall commence upon the Effective Date and shall continue for a period of three years from the Launch Date (the “**Initial Term**”). Thereafter, this Agreement shall renew automatically for successive one (1) year periods (each a “**Renewal Term**”), unless either Party terminates the Agreement in accordance with Section 8.2 of this Agreement. The Initial Term and Renewal Terms jointly are referred to as the “**Term**”.



**8.2 Termination.** Either Party may terminate this Agreement at any time upon written notice to the other Party: (i) if the other Party materially breaches any material provision of this Agreement and fails to remedy such material breach within thirty (30) days after receiving written notice of such breach; or (ii) if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other Party and is not dismissed within ninety (90) days, or the other party becomes judicially declared insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course of business.

**8.3 Wind Down Period.** In the event that either Party provides the other Party with a notice of termination ("**Termination Notice**") other than for material breach, the then current Term shall, at Customer's option, be extended by a period of sixty (60) days or such other mutually agreed time period ("**Wind Down Period**"). During the Wind Down Period, Customer may request and Flow shall, at Customer's expense, provide a copy of all User Content and/or User Data to Customer on a hard disk or other similar storage medium agreed to by the Parties. After the Wind Down Period has expired, Flow shall have no obligation to retain any copies of any User Content. Additionally, during the Wind-Down Period, Flow shall perform any such commercially reasonable actions necessary to complete the transition from Flow to a new third-party provider and provide Customer with access to data and/or any administrative tools necessary to effectuate such transition.

**8.4 Effects of Termination.** Upon the termination of the Agreement for any reason and after any Wind Down Period, (i) all licenses granted herein shall terminate; (ii) Customer shall immediately discontinue all use of the Service; (iii) upon Customer's written request, Flow shall destroy in a secure manner all electronic and hard copies of any User Data; and (iv) each Party shall either return to the other Party or destroy, as directed by the other Party, all Confidential Information.

**8.5 Survival.** Upon termination or expiration of this Agreement, the following provisions will survive in full force and effect: 5, 8, 9, 10, 11, 12, and 13 and any other provision which, by its nature, is intended to survive termination or expiration of this Agreement.

## **9. Indemnification.**

**9.1 By Customer.** Customer shall indemnify and hold harmless Flow, its parent organizations, subsidiaries, affiliates, officers, directors, employees and agents from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) the User Content, including without limitation any third party claim alleging that use of any User Content infringes or misappropriates the rights of, or has caused harm to, a third party; or (ii) the breach or violation by Customer of any of its responsibilities, representations, covenants, or warranties under this Agreement.

**9.2 By Flow.** Flow shall indemnify and hold harmless Customer, its parent organizations, subsidiaries, affiliates, officers, directors, employees and agents from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) the Flow Technology used in accordance with and as expressly permitted under this Agreement, including third party claims that the Flow Technology infringes or misappropriates any third party's Intellectual Property Rights; (ii) Flow's misuse of User Data; or (v) the negligent acts of Flow in connection with the performance of this Agreement.

**9.3 Indemnification Process.** A Party's obligation to indemnify ("**Indemnifier**") the other Party ("**Claimant**") pursuant to this Section 10 shall only arise if: (i) the Claimant promptly notifies the Indemnifier in writing of the claim; (ii) the Indemnifier has sole control of the defense and of any negotiations for its settlement; and (iii) the Claimant provides the Indemnifier with reasonable assistance, information, and authority necessary to perform the above. Claimant will have the right to employ separate counsel and

participate in the defense at Claimant's sole expense. Neither Party will settle or compromise any claim or action on the other party's behalf without first obtaining the other Party's written permission, which permission will not be unreasonably withheld.

## **10. Disclaimers.**

**10.1 Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN "AS-IS" BASIS AND FLOW MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTIES AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE. FLOW DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY DATA AND/OR CONTENT ACCESSED THROUGH THE SERVICE WILL BE ACCURATE OR RELIABLE, (D) ERRORS OR DEFECTS WILL BE CORRECTED, OR (E) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FLOW AND ITS LICENSORS DISCLAIM (TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW) ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

**10.2 Internet Delays.** FLOW'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FLOW IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**10.3 Force Majeure.** Neither Party will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement to the extent such delay or failure is caused by events, occurrences, or causes beyond the control and without negligence of such Party, including but not limited to acts of God, strikes, riots, acts of war, lockouts, earthquakes, fires and explosions, but the inability to meet financial obligations is expressly excluded.

## **11. Limitation of Liability.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL EITHER PARTY HAVE AGGREGATE LIABILITY ARISING OUT OF, WITH RESPECT TO OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER TO FLOW PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT UPON WHICH CLAIMS ARE BASED.

**12. Notice.** Any notices required to be given under this Agreement must be in writing and will be deemed given: (i) if delivered personally, on the date given; (ii) if delivered by an overnight courier delivery service, on the date of delivery; and (iii) if sent by electronic mail, upon receipt of a return e-mail (other than an automatically generated return e-mail indicating that the notice has been delivered) and provided that a copy of the notice is also sent via first-class mail. Notices shall be addressed to a Party at the address or email address noted below. A Party may designate a substitute address or e-mail address by written notice to the other party with the effectiveness of such notice governed by the terms of this Section 14. If the final day for giving notice is a Saturday, Sunday or nationally recognized holiday, then the time for giving such notice will be extended to the next business day.

Flow Corporation  
20 Jay Street  
Suite 622  
Brooklyn, NY 11201  
Attn: Eric Alterman  
Email: eric@flow.net

Customer  
Address  
City, State Zip  
Attn: Customer Contact  
Email: contact@customer.com

**13. General.**

This Agreement shall be governed by New York law and controlling United States law, without regard to the choice or conflicts of law provisions thereof, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in New York, NY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Flow as a result of this agreement or use of the Service. The failure of either Party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the waiving Party in writing. This Agreement comprises the entire agreement between Customer and Flow and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein. No provision of this Agreement may be terminated or modified unless such termination or modification is set forth in a written agreement executed by an authorized representative of Flow and of Customer. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signatures which have been scanned and transmitted electronically shall be deemed original signatures for all purposes. The section headings herein are included merely for convenience of reference, do not limit or affect any of the contents of this Agreement, and are not to be considered part of, or to be used in interpreting, this Agreement. This Agreement may not be assigned by either Party without the prior written approval of the other Party and any such assignment shall be null and void. Notwithstanding the foregoing, either Party may assign the Agreement, without the other Party's consent, to any successor to all or substantially all of such party's assets (whether by way of merger, consolidation, stock sale or otherwise) or another entity that directly or indirectly controls, is controlled by, or is under the common control with such assigning party. This Agreement shall inure to the benefit of and be binding upon the Parties' respective permitted successors and assigns.

## EXHIBIT A

### FLOW APPLICATION PROGRAMMING INTERFACES

The following additional terms and conditions shall apply to any use of Flow APIs by Customer.

Terms not defined in this Exhibit A shall have the meaning ascribed to them in the Flow Agreement to which this Exhibit is attached and made a part thereof.

#### 1. Sample Code

- A. At the Customer's request, Flow may provide sample code for handling Flow API transactions ("Sample Code"). Sample Code is not intended to be comprehensive and will *not* include all functionality for available API transactions.
- B. Customer agrees that it will use the Sample Codes carefully and assumes all risk of loss related to use. Customer not and will not permit the Sample Code to be used in manner which might result in any loss of its or any third party's property or information. All Sample Code is provided on an "as is" basis and Flow does not make any representations, warranties or guaranties as to their reliability.

#### 2. Data Caching and Security

- A. Customer may cache or otherwise store content, media, or data made available or which originated from the Flow APIs.
- B. Customer agrees to maintain the security of its password and identification, and to bear all risks of loss or damage associated with the use of the Flow APIs. It is solely the Customer's responsibility to provide and ensure for adequate protection for any and all code, content, media, or data used in conjunction with the Flow APIs.

#### 3. Appropriate Use

- A. Customer is responsible for its own conduct, the conduct of all of its contractors, and the content it displays when using the Flow APIs.
- B. Customer agrees:
  - a. Not to imply that the content or services provided by Customer in conjunction with the Flow APIs are endorsed by Flow;
  - b. Not to intentionally interfere with or disrupt Flow Services or servers or networks connected to Flow Services.

#### 4. Modifications

- A. Flow reserves the right to modify the Flow APIs as desired. Flow will make commercially reasonable efforts to provide advance notice and documentation to Customer of any changes to the Flow APIs.
- B. The Customer shall bear the responsibility of updating its code as needed to access the Service and the Flow APIs.

## EXHIBIT B

### SERVICE LEVEL AGREEMENT

#### 1. Availability of the Flow Service.

	Availability Level
Service	99.9%

#### 2. Exceptions to Availability of the Service.

The Service may not be available for use under the following circumstances, and in such case such periods of unavailability shall not be counted against Flow for purposes of calculating the Availability Level in Section 1 above:

- Normal Maintenance and Upgrades as described below;
- Breach of the Agreement by Customer, its Administrative Users, employees, contractors or agents; or
- Instances of force majeure.

Type of Maintenance	Purpose	Max Time Per Month	Window (Eastern Time)	Min Notice
Normal	<ul style="list-style-type: none"><li>• Preventive maintenance on the software/hardware components</li><li>• Addition of new features/functions</li><li>• Repair errors that are not immediately affecting customers' use</li></ul>	1 hour	12:00am - 7:00am	24 Hours
Upgrades	Perform upgrades on software or hardware elements necessary for long term health or performance	1 hour	12:00am - 7:00am	24 Hours

#### 3. Downtime.

During any period of unavailability of the Service in a calendar month subject to the exceptions set forth in Section 2 above ("**Downtime**"), Flow will not charge Customer for any Flow platform service fees, and to the extent that Customer is paying Flow a guaranteed monthly amount, Customer will be entitled to receive a pro-rata credit against such amount calculated based on the length in minutes of Downtime during the calendar month in which the Downtime occurred.

Within thirty (30) days after the end of any calendar month in which Downtime occurred, Flow shall provide Customer with a written report of such Downtime during the previous calendar month. Any credit allowance accrued by Customer in a given calendar month may directly reduce service fees owed to Flow for that calendar month.

Without limiting the foregoing, in the event the Service fails to meet the availability level described in Section 1 of this SLA in any two consecutive months during a three-month period during the Term (subject to the terms of Section 2), Customer will have the right to terminate this Agreement immediately on written notice to Flow. Such termination right and the credits described in the preceding paragraph shall be Customer's exclusive remedies for any failure of the Service to meet the availability level described in Section 1 of this SLA.

#### 4. Customer Support.

Customer support for the Service can be reached via <http://www.Flow.com/support/>. Cases will be opened upon receipt of request or identification of issue, and incidents will be routed and addressed according to the following:

<b>Severity Level</b>	<b>Error State Description</b>	<b>Target Response Time</b>	<b>Target Resolution Within</b>
1 – Critical Priority	Renders the Service unusable.	15 minutes	1 hour
2 – High Priority	Broadly severely impairs use of the Service.	1 hour	4 hours
3 – Medium Priority	Affects a feature of the Service but does not broadly severely impair use of the Service.	8 hours	24 hours
4 – Low Priority	Causes a minor or non-material impact on the use of the Service.	24 hours	--