

Terms of Service

Last updated on: August 26, 2024

Introduction

These Terms of Service are made between Feldera, Inc. ("**Feldera**") and the user ("**User**") of Feldera's products and services (the "**Services**"), including visitors to <https://www.feldera.com> (the "**Site**") and customers identified on the order form or other purchasing or licensing documentation (each, an "**Order Form**"). These Terms of Service govern the User's access to and use of the Services and, together with any applicable Order Forms, supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, both written and oral. In the event of any conflict between these Terms of Service and an Order Form, these Terms of Service will prevail unless the Order Form expressly identifies the term(s) it is intended to supersede or modify. These Terms of Service become effective upon the User's signature on the applicable Order Form, or if no Order Form is signed, when the User visits or otherwise accesses the Services, whichever occurs first.

Please carefully read these Terms of Service, which, along with Feldera's Privacy Policy (located at <https://www.feldera.com/privacy>) and each applicable Order Form, form a legally binding agreement (the "**Agreement**"). Any language or provisions contained on the User's website(s), request for proposal, specifications or product schedule, on any invoice, or contained in any shrinkwrap or clickwrap agreement, will be of no force and effect and will not supersede, modify or amend the Agreement.

Feldera may from time to time make changes to these Terms of Service without the User's consent, provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Order Form. The date that these Terms of Service were last updated is shown at the top of the page. All changes are effective immediately once posted. Any changes to the dispute resolution provisions will not apply to any disputes for which the parties have actual notice on or before the date the change is posted. The User's continued use of the Services following the posting of revised Terms of Service means that that the User accepts and agrees to the changes.

1. Services

- 1. Provision of Services.** Feldera will provide the Services to the User as described in these Terms of Service and, if applicable, in the Order Form(s). Unless Feldera agrees otherwise in writing, Feldera reserves the right to withdraw and amend any Service in its sole discretion without notice. Except as provided in these Terms of Service, Feldera may restrict access to some parts of a particular Service or all Services generally, and will not be liable if for any reason all or any part of the Services are unavailable at any time or for any period.
- 2. Evaluation Versions.** From time to time, Feldera may offer versions of products or services on a testing, demonstration, or evaluation basis ("**Evaluation Versions**"). Evaluation Versions are offered at Feldera's sole discretion. Evaluation Versions are not commercial launch versions, are not guaranteed to work properly, and may cause other parts of the User's system, or any Services with which the Evaluation Version interacts, to not work properly. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, INCLUDING ON ANY ORDER FORM, THE USER ASSUMES ANY AND ALL RISKS ASSOCIATED WITH EVALUATION VERSIONS, INCLUDING AS TO DATA PRIVACY AND SECURITY.** Feldera may extend or discontinue the User's existing access to an Evaluation Version at any time without notice. Feldera may (at its option) require the User to enter into a separate evaluation agreement in order to receive access to an Evaluation Version. Nothing in this Section 1.2 will be construed to confer any ownership or other proprietary rights to the User in any Evaluation Versions.
- 3. User Cooperation.** The User will provide Feldera with such cooperation, materials, information, access and support which Feldera deems to be reasonably required to allow Feldera to successfully provide the Services. The User understands and agrees that Feldera's obligation to provide the Services is expressly conditioned upon the User providing such cooperation, materials, information, access and support. In addition, the User is responsible for: (i) making all arrangements necessary for the User and its end users to have access to and use the Services, including obtaining all necessary licenses and consents and complying with all applicable laws; and (ii) ensuring that all persons who access the Services through the User's internet connection and systems are aware of the Agreement and comply with it.
- 4. Registration.** To access certain Services or resources Feldera offers, the User may be asked to provide certain registration details or other information. It is a condition of the User's use of those Services or resources that all the information provided is correct, current and complete. All information provided to Feldera for purposes of registering for an account or otherwise, including, but not limited to, through the use of any interactive features on the Site, is governed by

Feldera's [Privacy Policy](#), and the User consents to all actions Feldera takes with respect to the User's information consistent with the Privacy Policy.

5. **Account Access & Data.** The User will be responsible for identifying and authenticating all end users, for approving access by such end users to the Services, for controlling against unauthorized access by such end users, and for maintaining the confidentiality of user names, passwords and account information. Feldera is not liable for any harm caused by the User's end users, including individuals who were not authorized to have access to the Services. The User will be responsible for all activities that occur under the User's and its end users' passwords or accounts or as a result of the User's or its end users' access to the Services. The User will notify Feldera immediately of any unauthorized access to or use of any user name or password or any other breach of security. Feldera has the right to disable any user name, password or other identifier, whether chosen by the User or provided by Feldera, at any time in Feldera's sole discretion for any or no reason, including if, in Feldera's opinion, the User or any of its end users have violated any provision of the Agreement.

6. **Use Restrictions.** The User will not, and will not cause or permit others to:

- i. use the Services other than for licensed purposes, including to modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute, republish or download any part of the Services or Documentation;
- ii. use the Services in any way that violates any applicable federal, state, local or international law or regulation;
- iii. make the Services or Documentation, including any Feldera programs or materials to which the User is provided access, available in any manner to any third party;
- iv. use the Services for the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise;
- v. use the Services to transmit or store infringing, obscene, threatening, libelous, or otherwise unlawful or offensive content, materials or information that violates the privacy rights of any person or to transmit or store material containing software virus, worms, trojan horses or other harmful computer code;
- vi. use the Services to impersonate or attempt to impersonate Feldera or any other person or entity;

- vii. use the Services to engage in any conduct that restricts or inhibits anyone's use or enjoyment of the Services, or which, as determined by Feldera, may harm Feldera or other users of the Services, or expose Feldera or the other users to liability;
 - viii. attempt to circumvent, disable or defeat any limitations or restrictions on the User's access to or use of the Services;
 - ix. alter, obscure or remove any proprietary, warranty, disclaimer or other notices displayed in or with the Services or Documentation;
 - x. use the Services in any manner that could disable, overburden, damage or impair the Services or interfere with anyone's use of the Services, including their ability to engage in real time activities through the Services; or
 - xi. use the Services for any purposes competitive to Feldera or its products or services, including using any robot, spider or other automatic device, process or means to access the Services for any purpose, except as permitted in Section 1.7 below.
7. **Benchmarking.** The User may perform benchmarks or comparative tests or evaluations (each, a "**Benchmark**") of the Services and, except for Benchmarks of Evaluation Versions, may disclose the results of the Benchmark. If the User performs or discloses, or directs or permits any third party to perform or disclose, any Benchmark of any of the Services as permitted by this Section 1.7, the User (i) will include in any disclosure, and will disclose to Feldera, all information necessary to replicate such Benchmark, and (ii) agrees that Feldera may perform and disclose the results of Benchmarks of the User's products or services, irrespective of any restrictions on Benchmarks in the terms governing the User's products or services.
8. **User Compliance.** The User will abide by all applicable local, state, national and international laws and regulations in connection with the User's (and its end users') use of the Services, including those related to taxes, data privacy and the transmission of technical or personal data. Except as described in the Privacy Policy, Feldera will not be liable or responsible for the deletion, correction, destruction, damage, loss or failure to store any content, data or material the User processes using the Services ("**User Data**").
9. **Resultant Data.** Feldera may collect data and other information related to User's and its end users' use of the Services ("**Resultant Data**") and use the Resultant Data in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the

Services. For the avoidance of doubt, Resultant Data does not constitute User Data.

10. **Third-Party Links on the Site.** The Site may contain links to third-party websites, products and services, including social media features. The User's access to or use of the third-party websites, products and/or services are at the User's own risk and may be subject to additional terms and conditions. Feldera expressly disclaims all liability or responsibility with respect to the third-party websites, products and services and may disable links to all or any of the same at any time without notice in Feldera's sole discretion.
11. **Subcontractors.** Feldera reserves the right to use subcontractors to support its operations and its provision of the Services on Feldera's behalf, and the User consents to such use, provided that Feldera will remain solely responsible to the User for the provision of all applicable Services.

2. License Grants

1. **License Grants.** Subject to the User's compliance with the terms and conditions of the Agreement, Feldera grants to the User, solely for the User's internal business operations, a limited, non-exclusive, non-sublicensable, revocable, non-transferable right and license to: (i) access and use the Services; (ii) use, reproduce and distribute internally a reasonable number of copies of the documentation provided to the User or otherwise made available in connection with the Services ("**Documentation**"); and (iii) permit third party contractors performing services on the User's behalf to access and use the Services and Documentation in accordance with the terms and conditions of the Agreement provided that (A) such use must be solely for the benefit of the User; and (B) the User will be responsible for all acts and omissions of such third parties. For Services provided pursuant to an Order Form, the license to the Services provided in this Section 2.1 will be effective for the duration of the term set forth in the applicable Order Form (the "**License Term**"), unless earlier terminated in accordance with the Agreement.
2. **User Data.** With respect to any and all User Data, whether provided by or on behalf of the User directly, or accessed by Feldera or by any third party at the direction or on behalf of the User, the User grants to Feldera and its service providers, both during and after the term of the Agreement, the non-exclusive, perpetual, irrevocable, worldwide, royalty-free right and license to use User Data in the manner indicated by the User, as well as, on a non-identifiable basis (i.e., not identifiable as originating from or identifying the User, except as required by law), to improve Feldera's products and services and for any other lawful purpose. The User represents and warrants that any such use of User Data by or on behalf

of Feldera will not violate any law, rule or regulation, or violate or infringe the rights of the User or any third party.

3. **Feedback.** The User may, but is not obligated to, provide Feldera with certain feedback, suggestions, comments, ideas, or other concepts relating to the Services (collectively, "**Feedback**"). By providing Feedback, the User (i) represents and warrants that it has the right to disclose the Feedback and that the Feedback does not contain the confidential or proprietary information of the User or any third party or violate any third-party rights, and (ii) irrevocably grants Feldera a paid-up, royalty-free, perpetual, irrevocable, worldwide, sublicensable and transferable right and license to use, modify, prepare derivative works from, publish, distribute and otherwise freely exploit the Feedback, in each case by any means and in any manner now known or hereafter invented, without any remuneration due to the User. For the avoidance of doubt, Feedback does not constitute confidential information of the User.
4. **Delivery; License Keys.** For Services in which a license key is necessary for access, access to the Services will be deemed delivered to the User upon Feldera making available to the User the applicable access protocols. The User understands and agrees that such protocols are required to enable the Services and that such protocols are valid only during the License Term.
5. **Protection Against Unauthorized Use.** The User will promptly notify Feldera of any unauthorized use, reproduction or distribution of the Services or Documentation of which it becomes aware. In the event of any unauthorized use, reproduction or distribution by any of the User's end users, employees, agents or representatives, the User will use commercially reasonable efforts to terminate any such unauthorized use and to retrieve any unauthorized copy of the Services or Documentation in the possession or control of the person or entity engaging in such unauthorized use. Feldera may, at its option and expense, participate in any such proceeding and, in such an event, the User will provide such authority, information and assistance related to such proceeding as Feldera may reasonably request.

3. Ownership

Feldera and its licensors retain all ownership and intellectual property rights to the Services and Documentation. In the course of providing the Services, Feldera may create derivative works of the Services and Documentation, including new software or other works of authorship (collectively "**Derivatives**"). Feldera will own all right, title and interest in and to all Derivatives, including all intellectual property rights. Feldera grants to the User a license to such Derivatives under the same terms and conditions as the

User's license to the Services set forth in Section 2, above. Nothing in the Agreement will be deemed to prohibit Feldera from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of providing the Services to the User. The User is not obtaining any intellectual property right in or to any products, services or materials provided by Feldera to the User, other than the limited rights to use the Services and Documentation specifically granted in the Agreement. All Feldera trademarks, trade names, logos (collectively, "**Marks**") and notices present or displayed on or in connection with the Services or Documentation will be preserved and not modified, obstructed or obliterated. The User will not use any Marks without Feldera's express written authorization. Feldera will have the right to use the User's trademarks in Feldera advertising and promotional materials for the purpose of indicating that the User is a user and/or customer (as applicable) of Feldera products and services.

4. Fees, Payment and Taxes

1. **Fees; Expenses.** For paid Services, the User will pay Feldera the fees for the Services as specified in the applicable Order Form(s). Feldera may increase fees by providing written notice at least sixty (60) days prior to the expiration of the then-current License Term. The User will reimburse Feldera for out-of-pocket expenses incurred by Feldera in connection with providing the Services.
2. **Payment.** Unless otherwise specified in the Order Form, all invoices will be paid in US dollars and are due within thirty (30) days after the date of the invoice. Payments will be made without right of set-off or chargeback. The User will pay all amounts due under the Agreement to Feldera via the payment method set forth in any invoices or as otherwise specified on the Order Form. Any amount not paid when due may be subject to interest at the rate of one and one half percent (1.5%) per month or, the maximum rate permitted by law, whichever is less, determined and compounded on a daily basis from the date due until the date paid.
3. **Taxes.** All amounts payable by the User to Feldera under the Agreement are exclusive of any tax, levy, other similar governmental charge that may be assessed by any jurisdiction ("**Taxes**"). The User will pay such Taxes, whether based on gross revenue, the receipt, access or use of the Services, the execution or performance of the Agreement or otherwise, and including without limitation all goods and services tax, sales tax, excise duty, import or export levy, value added tax, governmental permit fees, license fees, and customs; provided, however, that the User will have no liability for any net income, net worth or franchise taxes assessed on Feldera by the United States or any state. If, as a result of any tax or levy, the User is required to withhold any amount on any

payment to Feldera, then the amount of the payment to Feldera will be automatically increased to totally offset such tax, so that the amount actually remitted to Feldera, net of all taxes, equals the amount invoiced or otherwise due. The User will promptly furnish Feldera with the official receipt of payment of these taxes to the appropriate taxing authority. If the User is tax exempt, the User will provide Feldera with a certificate of exemption acceptable to the taxing authority.

5. Renewal of the License Term; Termination

- 1. Renewal of the License Term.** For Services provided pursuant to an Order Form, unless earlier terminated in accordance with Section 5.2 below or Feldera provides written notice of its intent not to renew, upon the expiration of the License Term, the applicable Order Form will automatically renew for a term equal to the License Term. In such case, the terms and conditions of the Agreement will remain in full force and effect throughout the duration of the extended License Term.
- 2. Termination; Post Termination.** Either the User or Feldera may, upon written notice to the other party, terminate the Agreement (in whole or in part) in the event of a material breach by the other party, which, to the extent curable, such other party fails to cure within thirty (30) days after receiving written notice from the non-breaching party. Notwithstanding the foregoing, Feldera will have the right to terminate the Agreement immediately upon written notice (email to suffice) in the event of any breach by the User of the license granted in Section 2 of the Agreement. Upon expiration or termination of the Agreement, for any reason, the User will promptly cease the use of the Services and Documentation and destroy (and certify to Feldera in writing the fact of such destruction) or return to Feldera, at Feldera's election and direction, all Feldera materials then in the User's possession or under the User's control.
- 3. Suspension.** In addition to its other rights under the Agreement in equity or at law, Feldera may suspend the User's access to the Services (in whole or in part) with or without notice: (i) to comply with any law, regulation, court order, or other governmental request or order which requires immediate action; (ii) for the User's non-payment of applicable fees or (iii) for any reasonably suspected unauthorized use of the Services or violation of applicable law by the User or any of its end users. In the event of any such suspension, Feldera will promptly restore access to the Services to the User as soon as the event giving rise to the suspension has been resolved to Feldera's satisfaction.

4. **Survival.** The following sections will survive any termination or expiration of this Agreement: 2.3; 2.4; 3; 5.3; 5.4; 6; 7; 8; 9; 10 and 11.

6. Confidentiality

1. **Confidential Information.** “**Confidential Information**” means all non-public, confidential or proprietary information or materials of Feldera, including but not limited to anything provided by Feldera in connection with any professional or support services provided hereunder and other information by or on behalf of Feldera which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made.
2. **Non-Use and Non-Disclosure.** The User will not use Confidential Information other than as necessary to exercise its rights or carry out its duties under the Agreement, nor disclose any Confidential Information to third parties without Feldera’s prior written consent. The User will give notice to Feldera immediately after learning of or having reason to suspect a breach of any of the restrictions or obligations set forth in this Section 6.
3. **Exclusions.** The foregoing obligations will not apply to information that: (i) has entered the public domain except where such entry is the result of the User’s breach of the Agreement; (ii) prior to disclosure hereunder was already in User’s possession without restriction; or (iii) subsequent to disclosure hereunder is obtained by the User on a non-confidential basis from a third party who has the right to disclose such information. The User acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone may not be a sufficient remedy, and therefore that upon any such disclosure, Feldera will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

7. Representations and Warranties

1. **By the User.** The User represents and warrants that (i) the User owns or otherwise has and will maintain the necessary rights and consents in and relating to the User Data so that, as received, accessed and/or processed by Feldera in accordance with the Agreement, the User Data do not and will not infringe, misappropriate or otherwise violate any intellectual property, privacy or other rights of the User or any third party or violate any applicable law; and (ii) it has

all of the rights, licenses, authorizations, consents and other approvals necessary to allow Feldera to integrate or interface the Services with any User system or any third-party product, service or system.

2. **By Feldera.** Excluding the Site, Feldera represents and warrants that it will provide the Services in all material respects in accordance with the applicable Documentation therefor. The User's exclusive remedy and Feldera's sole obligation for any failure of the Services to perform in all material respects in accordance with its Documentation will be for Feldera to use its commercially reasonable efforts to correct such non-conformance. Such warranties do not apply to any defect resulting from: (i) misuse, (ii) casualty loss, (iii) use or combination of the Services with any products, goods, services or other items furnished by anyone other than Feldera, or (iv) any modification not made by or for Feldera, or any use of the Services by the User in violation of the terms of the Agreement.
3. **Disclaimer.** EXCEPT AS SET FORTH IN SECTION 7.2 ABOVE, THE SERVICES, DOCUMENTATION, AND ANY OTHER MATERIALS OR INFORMATION FURNISHED OR PROVIDED TO THE USER UNDER THE AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND, AND FELDERA AND ITS LICENSORS MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING OR RELATING TO SAME. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, FELDERA AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. FURTHER, FELDERA DOES NOT WARRANT ANY RESULTS OF THE USER'S USE OF THE SERVICES, THAT THE SERVICES WILL BE RELIABLE, ERROR FREE OR UNINTERRUPTED OR THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED. FELDERA USES A THIRD-PARTY DATA CENTER TO HOST THE SERVICES. THE USER ACKNOWLEDGES THAT FELDERA DOES NOT CONTROL THE TRANSFER OF DATA OVER SUCH THIRD-PARTY FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH THIRD-PARTY FACILITIES. FELDERA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING THEREFROM.

8. Intellectual Property Infringement Claims

1. **Obligation.** Subject to the applicable conditions and limitations set forth in this Section 8, Feldera will, at its expense (i) defend, or at its option settle, a claim

brought against the User by an unaffiliated third party alleging that the User's use of the Services as permitted hereunder infringes such party's intellectual property rights (each an "**Infringement Claim**") and (ii) pay any settlement of such Infringement Claim consented to by Feldera in writing or pay any damages finally awarded to such third party by a court of competent jurisdiction as the result of such Infringement Claim.

2. **Exclusions.** Feldera will have no obligation to the User to the extent any Infringement Claim is based upon or results from: (i) the Site; (ii) the failure of the User to implement or deploy an update to the Services that would avoid the infringement; (iii) a modification of the Services that is not performed by Feldera; (iv) the combination, operation, or use of the Services with any other products, services or equipment not provided by Feldera; (v) the User Data or any other materials or information owned or licensed by the User, excluding the subject matter of the licenses granted hereunder or (vi) any third party open source software.
3. **Conditions.** The obligations of Feldera in this Section 8 are conditioned upon the User (i) notifying Feldera promptly of any threatened or pending Infringement Claim, (ii) giving Feldera reasonable assistance and information requested by Feldera in connection with the defense or settlement of the Infringement Claim and (iii) tendering to Feldera sole control over the defense and settlement of the Infringement Claim. The User's counsel will have the right to participate in the defense of the Infringement Claim, at the User's own expense. The User will not, without the prior written consent of Feldera, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.
4. **Remedies.** If any portion of the Services provided to the User hereunder are, or in Feldera's reasonable opinion are likely to become, the subject of an Infringement Claim, Feldera may, at its expense and option: (i) obtain the right for the User to continue to use the Services as contemplated hereunder; (ii) modify the Services so that they becomes non-infringing but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) is commercially reasonable, terminate the Agreement (in whole or in part) and promptly refund to the User a prorated amount of any pre-paid, but unused, fees paid by the User to Feldera prior to such termination.
5. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF FELDERA, AND THE EXCLUSIVE REMEDY OF THE USER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE AGREEMENT.

9. Indemnification by User

User Indemnification. To the maximum extent allowed by applicable law, the User will indemnify and hold harmless Feldera, its licensors and its subsidiaries, affiliates, officers, directors, employees, and agents from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with the claim of a third party alleging that the User Data or its use has infringed the rights of, defamed or otherwise caused harm to, a third party, or violated applicable law; provided in any such case that Feldera (i) gives written notice of the claim promptly to the User; (ii) gives the User sole control of the defense and settlement of the claim (provided that any settlement releases Feldera of all responsibility and liability and such settlement does not affect Feldera's rights or business); (iii) provides to the User all available information and assistance reasonably requested; and (iv) has not compromised or settled such claim without the User's prior written consent.

10. Limitations of Liability

- 1. Disclaimer of Certain Damages.** EXCEPT IN CONNECTION WITH FULFILLMENT OF INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL FELDERA OR ITS LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, OR THE PERFORMANCE OF OR FAILURE TO PERFORM UNDER THE AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF FELDERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, INACCESSIBILITY AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET. FELDERA IS NOT RESPONSIBLE AND DISCLAIMS ALL LIABILITY FOR ANY DELAYS, FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS. THE USER IS FULLY RESPONSIBLE FOR INTERNET ACCESS AND CONNECTIVITY ISSUES. THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- 2. Damages Cap.** IN NO EVENT WILL FELDERA'S OR ITS LICENSORS' AGGREGATE, CUMULATIVE LIABILITY UNDER THE AGREEMENT EXCEED THE AMOUNTS THE USER HAS PAID OR WAS REQUIRED TO PAY FELDERA UNDER THE AGREEMENT FOR THE SERVICES GIVING RISE TO SUCH LIABILITY, IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE

FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

11. Miscellaneous

1. **Assignment.** The User will not assign the Agreement, in whole or in part, or any or all of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of Feldera. Any assignment in violation of this Section 11.1 will be void and of no effect. Subject to the foregoing, the Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.
2. **Force Majeure.** Neither party will be liable for, or be considered to be in breach of or default under the Agreement, other than monetary obligations, as a result of any cause or condition beyond such party's reasonable control.
3. **Governing Law and Jurisdiction.** The Agreement will be governed by the laws of the State of California, without regard to its conflicts of law principles. The 1980 UN Convention on Contracts for the International Sale of Goods does not apply to this Agreement. All disputes, claims and suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. The parties irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense. If any provision(s) of this Agreement is held unenforceable, the Agreement will continue without that provision and be interpreted to reflect the original intent of the parties.
4. **Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM THE USER MAY HAVE ARISING OUT OF OR RELATING TO THE AGREEMENT OF USE OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
5. **Notices.** Any notice or other communication under the Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered via email to the contact person for such party identified in the Order Form as or otherwise specified by a party.
6. **Non-waiver.** Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as

a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

- 7. Relationship.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

Contact Us

For questions about the Agreement or the Services, contact us at support@feldera.com.